

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

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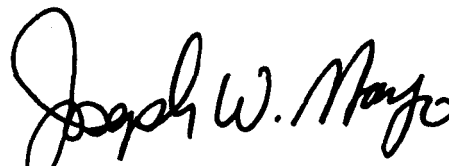
H.P. 1352

House of Representatives, March 14, 1996

**An Act to Reorganize and Redirect Aspects of the Site Location of
Development Laws.**

Reported by Representative DEXTER for the Land and Water Resources Council pursuant to Resolve 1995, chapter 21.

Reference to the Joint Standing Committee on Natural Resources suggested and printing ordered under Joint Rule 20.


JOSEPH W. MAYO, Clerk

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

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PART A

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Sec. A-1. 30-A MRSA §4401, sub-§3-A is enacted to read:

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3-A. Public costs of development. "Public costs of development" means financial costs related to the increased use of or improvements to public facilities and services, such as roadways, water and sewer supplies, schools and school bus services, associated with the proposed location of a development subject to municipal review and regulation under this chapter.

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Sec. A-2. 30-A MRSA §4404-A is enacted to read:

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§4404-A. Public costs of development

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1. Identification of public costs of development. Except as provided in subsection 2, the municipal reviewing authority shall prepare fiscal impact findings estimating the public costs of development and identifying the party financially responsible for those costs for each subdivision subject to review under section 4404. The municipal reviewing authority shall forward these findings to the State Planning Office. These findings are not a basis for a decision under section 4403. Any municipal costs associated with preparation of these findings may be included in the application fee for a subdivision.

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2. Limitation. Preparation of the fiscal impact findings provided for in subsection 1 is not necessary for a subdivision located in a growth area identified in a comprehensive plan that has been determined to be consistent with the requirements of this chapter by the State Planning Office.

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Sec. A-3. Guidelines; public costs of development. No later than January 1, 1997, the State Planning Office shall develop guidelines to assist municipalities in identifying public costs of development, as defined by the Maine Revised Statutes, Title 30-A, section 4401, subsection 3-A. The State Planning Office shall distribute those guidelines to each municipality and regional planning agency in this State.

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PART B

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Sec. B-1. 38 MRSA §352, Table I, as amended by PL 1995, c. 493, §1, is further amended to read:

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TABLE I

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MAXIMUM FEES IN DOLLARS

4	TITLE 36 SECTION	PROCESSING FEE	CERTIFICATION FEE
6	656, sub-§1, _E, Pollution Control Facilities		
8	A. Water pollution control facilities	\$250	\$20
10	with capacities at		
12	least 4,000 gallons		
14	of waste per day and		
16	§1760, sub-§29, water		
18	pollution control		
20	facilities		
22	B. Air pollution control and §1760,	250	20
24	sub-§30, air pollution		
26	control facilities		
28	TITLE 38 SECTION		
30	344, sub-§7, Permit by rule	\$50	\$0
32	362-A. Experiments	175	175
34	413, Waste discharge licenses		
36	A. Residential (10-year term)	450	150
38	B. Commercial (10-year term)		
40	1. Flow of less than 2,000 gallons per day	4,800	1,280
42	2. Flow of 2,000 to 20,000 gallons per		
44	day inclusive	4,800	4,000
46	3. Flow of greater than 20,000 gallons		
48	per day	4,800	9,600
50	C. Industrial minor (based upon EPA list of major and minor source discharges)		
52	1. Discharges of cooling water, sanitary wastewater or treated storm water only	1,500	480
54	2. All others	1,500	6,000
56	D. Industrial major		

2	(based upon EPA list of major source discharges)		
4	1. Discharge of cooling water or sanitary wastewater only	4,800	3,000
6	2. All others	4,800	8,800
8	E. Publicly owned treatment works		
10	1. Flow of less than or equal to 50,000 gallons per day and no significant industrial component	100	400
12	2. Flow of greater than 50,000 gallons per day, but less than 0.5 million gallons per day and no significant industrial component	100	1,400
14	3. Flow of at least 0.5 million gallons per day, but less than 5 million gallons per day and no significant industrial component	100	3,600
16	4. Flow of at least 5 million gallons per day or a significant industrial component	300	5,400
18	F. Special discharges		
20	1. Aquatic pesticides	130	75
22	2. Dredge spoils	130	75
24	418, Log storage	55	25
26	451, Mixing zones	1,200	2,200
28	451-A, Time schedule variances	25	25
30	480-E, Natural resources protection		
32	A. Any alteration of a protected natural resource, except coastal wetlands and coastal sand dunes, causing less than 20,000 square feet of alteration of the resource	140	50
34	B. Any alteration of a coastal wetland causing less than 20,000 square feet of	240	60

2	alteration of the resource		
4	C. Any alteration of a protected natural resource, except coastal sand dunes, causing 20,000 square feet or more of alteration of the resource	.015/sq. ft. alteration	005/sq. ft. alteration
6			
8	D. Any alteration of a coastal sand dune	3,500	1,500
10	E. Condition compliance	84	0
12	F. Minor modification	184	0
14	485-A, Site location of development		
16	A. Residential subdivisions		
18	1. Affordable housing	50/lot	50/lot
20	2. On public water and sewers	175/lot	175/lot
22	3. All Other	250/lot	250/lot
24	B. Industrial parks	460/lot	460/lot
26	C. Mining	1,500	1,000
28	D. Structures	4,000	2,000
30	<u>D-1. Traffic</u>		
32	<u>Scoping meeting with no further review</u>	500	0
34	<u>Scoping meeting with further review</u>	500	1,500
36	<u>"Scoping meeting" refers to the process described in section 484, subsection 2, paragraph B</u>		
38	E. Other	1,000	1,000
40	543, Oily waste discharge	40	160
42	560, Vessels at anchorage	125	100
44	587, Ambient air quality or emissions standards variances	5,050	50
46	590, Air emissions licenses	See section 353-A	
48	633, Hydropower projects		
50	A. New or expanded generating capacity	450/MW	50/MW
52	B. Maintenance and repair or other structural alterations not involving an increase in generating capacity	150	50
54	1101, Sanitary districts	150	50
56	33 United States Code,		

	Chapter 26, Water Quality		
2	Certifications, in conjunction		
	with applications for		
4	hydropower project licensing		
	or relicensing		
6	A. Initial consultation	1,000	0
	B. Second consultation	1,000	0
8	C. Application		
	1. Storage	1,000	0
10	2. Generating	300/MW	50/MW
	1304, Waste management		
12	A. Septage disposal		
	1. Site designation	50	25
14	B. Land application of		
	sludges and residuals		
16	program approval		
	1. Industrial sludge	400	400
18	2. Municipal sludge	300	275
	3. Bioash	300	275
20	4. Wood ash	300	75
	5. Food waste	300	75
22	6. Other residuals	300	175
	C. Landfill		
24	1. Closing plans for	1,500	1,500
	nonmunicipal landfills		
26	2. Closing plans for	500	500
	municipal landfills		
28	3. Variance requests	175	175
	for attenuation land-		
30	fills		
	4. Preliminary	175	175
32	information reports		
	5. License transfers	500	175
34	6. Special waste		
	disposal		
36	a. One-time	50	50
	disposal of		
38	quantities of		
	6 cubic yards or		
40	less		
	b. One-time	100	100
42	disposal of		
	quantities greater		
44	than 6 cubic yards		
	c. Program approval	300	300
46	for routine disposal		
	of a special waste		
48	D. Incineration facility		

2	1. Fuel substitution activities	1,575	1,500
4	2. License transfer	175	175
6	E. License transfer other than for landfills and incinerators	100	100

8 **Sec. B-2. 38 MRSA §481, 5th ¶** is enacted to read:

10 The Legislature further finds that the development,
 12 maintenance and preservation of safe, efficient and
 14 environmentally sound transportation systems are vital to the
 16 protection of the economic, physical and social well-being of the
 18 citizens of the State; that preservation and enhancement of the
 20 service capabilities of the existing transportation
 22 infrastructure are important public functions in furtherance of
 24 these goals; that the location of developments can have
 26 significant environmental, operational, safety and fiscal impacts
 28 upon the transportation infrastructure; that the expertise to
 30 evaluate and regulate transportation impacts primarily resides
within the Department of Transportation; and that the transfer of
responsibilities for the evaluation and regulation of the impacts
of the location of development upon the transportation
infrastructure from the Department of Environmental Protection to
the Department of Transportation may benefit the citizens of the
State by creating a more efficient and simpler regulatory system,
provided that this system offers an applicant under section 485-A
the option of a consolidated permit process in which an
application requires approval from both agencies.

32 **Sec. B-3. 38 MRSA §482, sub-§2,** as repealed and replaced by PL
 1993, c. 680, Pt. C, §7, is amended to read:

34 **2. Development of state or regional significance that may**
 36 **substantially affect the environment.** "Development of state or
 regional significance that may substantially affect the
 38 environment," in this article also called "development," means
 any federal, state, municipal, quasi-municipal, educational,
 40 charitable, residential, commercial or industrial development
 that:

- 42 A. Occupies a land or water area in excess of 20 acres;
- 44 B. Contemplates drilling for or excavating natural
 46 resources on land or under water where the area affected is
 in excess of 60,000 square feet;
- 48 C. Is a mining or advanced exploration activity as defined
 50 in this section;

2 D. Is a structure as defined in this section; or

4 E. Is a subdivision as defined in this section; or

6 I. Generates 100 or more passenger car equivalents at peak hour.

8 "Development" does not include borrow pits regulated under
10 article 7.

12 **Sec. B-4. 38 MRSA §482, sub-§3-C** is enacted to read:

14 3-C. Passenger car equivalents at peak hour. "Passenger car
equivalents at peak hour" means the number of passenger cars, or,
in the case of nonpassenger vehicles, the number of passenger
cars that would be displaced by nonpassenger vehicles, that pass
through an intersection or on a roadway under prevailing roadway
and traffic conditions at that hour of the day during which the
traffic volume generated by the development is higher than the
volume during any other hour of the day. For purposes of this
article, one tractor-trailer combination is the equivalent of 2
passenger cars.

24 **Sec. B-5. 38 MRSA §482, sub-§5**, as amended by PL 1995, c. 493,
26 §5, is further amended by repealing and replacing the first
paragraph to read:

28 5. Subdivision. A "subdivision" is the division of a
parcel of land into 5 or more lots, other than lots for
single-family, detached, residential housing, common areas or
open space, to be offered for sale or lease to the general public
during any 5-year period, if the aggregate land area includes
more than 20 acres; or the division of a parcel of land into 15
or more lots for single-family, detached, residential housing,
common areas or open space, to be offered for sale or lease to
the general public within any 5-year period, if the aggregate
area includes more than 30 acres. The aggregate land area
includes lots to be offered together with the roads, common
areas, easement areas and all portions of the parcel of land in
which rights or interests, whether express or implied, are to be
offered. This definition of "subdivision" is subject to the
following exceptions:

44 **Sec. B-6. 38 MRSA §482, sub-§7**, as enacted by PL 1991, c. 160,
46 §1, is repealed.

48 **Sec. B-7. 38 MRSA §483-A**, as amended by PL 1993, c. 383, §20
and affected by §42, is further amended to read:

50 **§483-A. Prohibition**

2 No A person may not construct or cause to be constructed or
operate or cause to be operated or, in the case of a subdivision,
4 sell or lease, offer for sale or lease or cause to be sold or
leased, any development of state or regional significance that
6 may substantially affect the environment without first having
obtained approval for this construction, operation, lease or sale
8 from the department. A person having an interest in, or
undertaking an activity on, a parcel of land affected by an order
10 or permit issued by the department may not act contrary to that
order or permit.

12 **Sec. B-8. 38 MRSA §484, first ¶,** as affected by PL 1989, c.
14 890, Pt. A, §40 and amended by Pt. B, §89, is further amended to
read:

16 The department shall approve a development proposal whenever
18 it finds ~~that~~ the following.

20 **Sec. B-9. 38 MRSA §484, sub-§2,** as affected by PL 1989, c.
22 890, Pt. A, §40 and amended by Pt. B, §90, is further amended to
read:

24 **2. Traffic movement.** The For any development that
26 generates 100 or more passenger car equivalents at peak hour, the
developer has made adequate provision for traffic movement of all
types into, and out of ~~or~~-within the development area. The
28 ~~department--shall--consider--traffic--movement--both--on-site--and~~
~~off-site.~~ Before issuing a permit, the department shall
30 determine that any traffic increase attributable to the proposed
development will not result in unreasonable congestion or unsafe
32 conditions on a road in the vicinity of the proposed
development. The department may require alternative or
34 multimodal measures. The Department of Transportation shall
provide the department with an analysis of traffic movement of
36 all types into, and out of ~~or~~-within the development area and
with a statement of recommended findings on traffic issues. In
38 making its determination under this subsection, the department
shall consider the analysis and recommendations provided by the
40 Department of Transportation. Traffic movement determinations
are subject to the following.

42 A. A proposed development that involves fewer than 100
44 passenger car equivalents at peak hour is not subject to
traffic review.

46 B. Notwithstanding any other provision of this article, the
48 review of any proposed development that requires approval
under this article solely because it is a development that
50 generates 100 or more passenger car equivalents at peak hour

2 is limited only to issues relevant to the traffic movement
3 standard in this section. The additional provisions in this
4 paragraph apply only to section 485-A permits for a proposed
5 development that generates 100 to 200 passenger car
6 equivalents at peak hour and is subject to the limited scope
7 of review provided in this subsection.

8 If an application is subject to review by the department,
9 the department, together with the Department of
10 Transportation and the appropriate representative of the
11 municipality or municipalities where the project is located,
12 shall discuss with the applicant the scope of impact
13 evaluation required for the proposed development and the
14 type of proceedings warranted. The applicant shall provide
15 notice to abutting municipalities. The Department of
16 Transportation shall make the final determination on the
17 appropriate scope of evaluation and information required.
18 If the Department of Transportation determines as a result
19 of these communications that the applicant has demonstrated
20 that the proposed development satisfies minimum performance
21 standards adopted for developments that generate 100 to 200
22 passenger car equivalents at peak hour and the Department of
23 Transportation determines that there are no other
24 significant traffic-related issues presented, the department
25 may issue a permit to the applicant without further
26 proceedings.

27 C. If a development is located in an area designated as a
28 growth area in a local growth management plan that has been
29 found by the State to be consistent with the growth
30 management program in Title 30-A, chapter 187, the
31 department shall require improvements to the level of
32 traffic service only if the level of service adjacent to or
33 in the vicinity of the development is or would be level of
34 service E or F, as determined by the Department of
35 Transportation in accordance with the "Highway Capacity
36 Manual" (3rd ed. 1994). In these cases, improvements are
37 limited only to those necessary to mitigate for the
38 foreseeable impacts of the development.

39 **Sec. B-10. 38 MRSA §484, sub-§4,** as repealed and replaced by
40 PL 1987, c. 812, §§10 and 18, is amended to read:

41 **4. Soil types.** The proposed development will be built on
42 soil types which that are suitable to the nature of the
43 undertaking ~~and will not cause unreasonable erosion of soil or~~
44 ~~sediment nor inhibit the natural transfer of soil.~~

45 **Sec. B-11. 38 MRSA §484, sub-§4-A** is enacted to read:

46

2 4-A. Storm water management and erosion and sedimentation
3 control. The proposed development meets the standards for storm
4 water management in section 420-D and the standard for erosion
5 and sedimentation control in section 420-C. If a permit is
6 issued pursuant to this article, a permit may not be required
7 pursuant to section 420-D.

8 **Sec. B-12. 38 MRS §485-A, sub-§1-B** is enacted to read:

10 1-B. Advance ruling. Any person intending to construct or
11 operate a development may, before filing a complete application
12 for the development, seek an advance ruling from the department
13 as to whether the development meets requirements for approval
14 under provisions relating to traffic. A request for an advance
15 ruling must be filed with the commissioner, together with other
16 information as the department may require. The department shall
17 issue an advance ruling no later than 45 days after the
18 submission of all information required by the department. An
19 advance ruling issued under this subsection is valid for 2 years
20 and is binding upon the department at the time that it acts upon
21 the application for the development unless there is a material
22 change in the development that affects the subject matter of the
23 advance ruling, or unless the commissioner or the board
24 determines that there is substantial new information on the
25 subject matter that requires reconsideration of the advance
26 ruling.

28 **Sec. B-13. 38 MRS §487-A, sub-§2.** as affected by PL 1989, c.
29 890, Pt. A, §40 and amended by Pt. B, §96, is further amended to
30 read:

32 **2. Power generating facilities.** In case of a permanently
33 installed power generating facility of more than 1,000 kilowatts
34 or a transmission line carrying ~~100~~ 120 kilovolts, or more,
35 proposed to be erected within this State by an electric utility
36 or utilities, the proposed development, in addition to meeting
37 the requirements of section 484, must also have been approved by
38 the Public Utilities Commission under Title 35-A, section 3132.

40 In the event that an electric utility or utilities file a
41 notification pursuant to section 485-A before they are issued a
42 certificate of public convenience and necessity by the Public
43 Utilities Commission, they shall file a bond or, in lieu of that
44 bond, satisfactory evidence of financial capacity to make that
45 reimbursement with the department, payable to the department, in
46 a sum satisfactory to the commissioner and in an amount not to
47 exceed \$50,000. This bond or evidence of financial capacity must
48 be conditioned to require the applicant to reimburse the
 department for its cost incurred in processing any application in

the event that the applicant does not receive a certificate of public convenience and necessity.

Sec. B-14. 38 MRSA §487-A, sub-§3, as enacted by PL 1987, c. 812, §§13 and 18, is amended to read:

3. Easement required; transmission line or gas pipeline.

In the case of a gas pipeline or a transmission line carrying ~~100~~ 120 kilovolts or more, a permit under this chapter may be obtained prior to any acquisition of lands or easements to be acquired by purchase. The permit shall must be obtained prior to any acquisition of land by eminent domain.

Sec. B-15. 38 MRSA §487-A, sub-§4, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §96, is further amended to read:

4. Notice to landowners; transmission line or gas pipeline. Any person making application under this article, for approval for a transmission line or gas pipeline shall, prior to filing a notification pursuant to this article, provide notice to each owner of real property upon whose land the applicant proposes to locate a gas pipeline or transmission line. Notice must be sent by certified mail, postage prepaid, to the landowner's last known address contained in the applicable tax assessor's records. The applicant shall file a map with the town clerk of each municipality through which the pipeline or transmission line is proposed to be located, indicating the intended approximate location of the pipeline or transmission line within the municipality. The applicant is not required to provide notice of intent to construct a gas pipeline or transmission line other than as set forth in this subsection. The department shall receive evidence regarding the location, character and impact on the environment of the proposed transmission line or pipeline. In addition to finding that the requirements of section 484 have been met, the department, in the case of the a pipeline not requiring a certificate of convenience from the Federal Energy Regulatory Commission or a transmission line or ~~or~~ pipeline, shall consider whether any proposed alternatives to the proposed location and character of the transmission line or pipeline may lessen its impact on the environment or the risks it would engender to the public health or safety, without unreasonably increasing its cost. The department may approve or disapprove all or portions of the proposed transmission line or pipeline and shall make such orders regarding its location, character, width and appearance as will lessen its impact on the environment, having regard for any increased costs to the applicant.

2 **Sec. B-16. 38 MRSA §488, first ¶**, as amended by PL 1993, c.
383, §26 and affected by §42, is further amended to read:

4 This ~~Article~~ article does not apply to any development in
5 existence or in possession of applicable state or local licenses
6 to operate or under construction on January 1, 1970, or to any
7 development the construction and operation of which has been
8 specifically authorized by the Legislature prior to May 9, 1970,
9 or to public service corporation transmission lines, except
10 transmission lines carrying ~~100~~ 120 kilovolts or more, nor does
11 it apply to the renewal or revision of leases of parcels of land
12 upon which a structure or structures have been located as of
13 March 15, 1972, nor to the rebuilding or reconstruction of
14 natural gas pipelines or transmission lines within the same
15 right-of-way.

16 **Sec. B-17. 38 MRSA §488, sub-§3**, as amended by PL 1993, c.
17 383, §26 and affected by §42, is repealed.

18 **Sec. B-18. 38 MRSA §488, sub-§5**, as amended by PL 1993, c.
19 383, §26 and affected by §42, is further amended to read:

20 **5. Subdivision exemptions.** The following ~~developments are~~
21 development is exempt from this article:

22 B. A development that consists only of a subdivision if:

23 (1) The average density of the subdivision is not
24 higher than one lot for every 5 acres of developable
25 land in the parcel;

26 (2) ~~The developable land in the parcel totals 200~~
27 ~~acres or less and at~~ At least 50% of the developable
28 land in the parcel is preserved in perpetuity through
29 conservation easements pursuant to Title 33, chapter 7,
30 subchapter VIII-A, in units common areas no smaller
31 than 10 acres in size and of dimensions that
32 accommodate within each unit common area boundary a
33 rectangle measuring 250 feet by 500 feet;

34 (3) The conservation easements preserve the land in an
35 essentially undeveloped natural state including the
36 preservation of farmland having a history of
37 agricultural use and the preservation of forest land
38 for harvesting by uneven-aged selection methods
39 designed to retain the natural character of the area,
40 except that other methods of harvesting are permissible
41 following a natural disaster;

- 2 (4) The conservation easements grant a 3rd-party right
of enforcement, as defined in Title 33, section 476, to
4 the department. The conservation easements granting a
3rd-party right of enforcement must be submitted to and
6 accepted by the commissioner;
- 8 (5) All significant wildlife habitat that is mapped or
that qualifies for mapping under section 480-B,
10 subsection 10 is included in the preserved land area
under subparagraph (3);
- 12 (6) No clearing, grading, filling or other development
activity occurs on sustained slopes in excess of 30%;
- 14 (7) If the developable land in the parcel not subject
16 to the requirements of subparagraphs (3) and (5) is
located wholly or in part in the watershed of any lake
18 or pond classified GPA under section 465-A, long-term
measures to control phosphorus transport are taken in
20 accordance with a phosphorus control plan that is
consistent with standards for phosphorus control
22 adopted by the board;
- 24 (8) Soil erosion and sedimentation during development
of the subdivision are controlled in accordance with a
26 plan approved by the municipality in which the
subdivision is located or by the soil and water
28 conservation district for the county in which the
subdivision is located;
- 30 (9) The nonpreserved, developable land in the parcel
32 is not located wholly or partly within the shoreland
zone of a lake or pond classified GPA under section
34 465-A; and
- 36 (10) At the time all necessary conservation easements
are filed with the department and at least 30 days
38 prior to the commencement of clearing and construction
activity, the person creating the subdivision notifies
40 the commissioner in writing on a form supplied by the
commissioner that the exemption afforded by this
42 paragraph is being used. The person creating the
subdivision shall file with that form a set of site
44 plans, including the plans required under subparagraphs
(7) and (8), and other evidence sufficient to
46 demonstrate that the requirements of this paragraph
have been met. The commissioner shall forward a copy
48 of the form to the municipality in which the
subdivision is located.
- 50

2 For purposes of this paragraph, "developable land in the
3 parcel" means all contiguous land in the same ownership
4 except for coastal wetlands, freshwater wetlands, rivers,
5 streams and brooks as defined in section 480-B and except
6 for any surface water classified GPA under section 465-A.

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

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

12 ~~(2)--The--parcel--is--located--within--a--municipality--having~~
13 ~~a--comprehensive--plan--and--land--use--ordinances--that--the~~
14 ~~Department--of--Economic--and--Community--Development--has~~
15 ~~determined--are--consistent--with--Title--30-A,--sections~~
16 ~~4312--to--4349;--and~~

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

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

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

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

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

46 ~~A--lot--in--a--residential--subdivision--exempted--pursuant--to--paragraph~~
47 ~~C--or--D--is--no--longer--counted--toward--the--30--lot--threshold--in~~
48 ~~paragraph--C--or--the--15--lot--threshold--in--paragraph--D--for--purposes~~
49 ~~of--determining--jurisdiction--more--than--5--years--after--the--time--a~~
50

2 municipal-subdivision-plan-showing-the-lot-is-recorded-or-the-lot
is--sold--or--leased,--whichever--occurs--first,---A--residential
4 subdivision-is-a-division-of-a-parcel-in-which-all-lots-are-used
for-single-family-housing-or-open-space.

6 **Sec. B-19. 38 MRSA §488, sub-§8**, as amended by PL 1993, c.
383, §26 and affected by §42, is repealed.

8 **Sec. B-20. 38 MRSA §488, sub-§11**, as enacted by PL 1993, c.
10 383, §26 and affected by §42, is amended to read:

12 **11. Farm and fire ponds.** A pond or ponds having--a--total
14 surface-area-of-less-than-10-acres, on a parcel, that is used for
irrigation of field crops, water storage for cranberry operations
16 or fire protection determined to be necessary in that location by
the municipal fire department is exempt from review under this
18 article. This provision does not provide an exemption for mining
or advanced exploration activity.

20 **Sec. B-21. 38 MRSA §488, sub-§14**, as amended by PL 1995, c.
462, Pt. A, §75, is further amended to read:

22 **14. Developments within designated growth areas.** The
24 following provisions apply to developments within a designated
growth area.

26 A. A development is exempt from review under traffic
28 movement, flood plain, noise and infrastructure standards
under section 484 if that development is located entirely
30 within:

32 (1) A municipality that has adopted a local growth
management program that the ~~Department of Economic and~~
34 ~~Community--Development~~ State Planning Office has
certified under Title 30-A, section 4348; and

36 (2) An area designated in that municipality's local
38 growth management program as a growth area.

40 An applicant claiming an exemption under this paragraph
shall include with the application a statement from the
42 ~~Department--of--Economic--and--Community--Development~~ State
Planning Office affirming that the location of the proposed
44 development meets the provisions of subparagraphs (1) and
(2).

46 An applicant claiming an exemption under this paragraph
48 shall publish a notice of that application in a newspaper of
general circulation in the region that includes the
50 municipality in which the development is proposed to occur.

2 That notice must include a statement indicating the standard
or standards for which the applicant is claiming an
4 exemption.

6 B. The commissioner may require application of the traffic
movement, noise, flood plain or infrastructure standards to
8 a proposed development if the commissioner determines, after
receipt of a petition under subparagraph (1) or on the
10 commissioner's own initiative under subparagraph (2), that a
reasonable likelihood exists that the development will have
12 a significant and unreasonable impact on traffic movement,
flood plains, infrastructure or noise beyond the boundaries
14 of the municipality within which the development is to be
located.

16 (1) Within 15 working days after the publication of
the notice required under paragraph A, municipal
18 officers or residents of the municipality in which the
development is proposed to occur or municipal officers
20 or residents of an abutting municipality may petition
the commissioner to apply one or more of the standards
22 for which an exemption is claimed under this
subsection. A petition must be signed either by the
24 municipal officers of the petitioning municipality or
by 10% of that number of registered voters of the
26 petitioning municipality casting ballots in the most
recent gubernatorial election or 150 registered voters
28 of the petitioning municipality, whichever is less.
The petition must include the name and legal address of
30 each signatory and must designate one signatory as the
contact person. The commissioner shall notify the
32 contact person and the applicant of the commissioner's
decision within 10 working days after receipt of a
34 petition meeting the requirements of this subsection.
A decision by the commissioner under this subparagraph
36 is appealable to the board.

38 (2) A decision to require the application of one or
more standards made on the commissioner's own
40 initiative must be made within 15 working days after
the application is filed with the department.
42

44 Nothing in this subsection may be construed to exempt a proposed
development from review for flooding potential due to increases
46 in ~~stormwater~~ storm water runoff caused by the development.

48 **Sec. B-22. 38 MRSA §488, sub-§19, is enacted to read:**

50 **19. Municipal capacity.** A structure, as defined in section
482, subsection 6, that is from 3 acres up to and including 7

2 acres or a subdivision, as defined in section 482, subsection 5,
3 that is made up of 15 or more lots for single-family, detached,
4 residential housing, common areas or open space with an aggregate
5 area of from 30 acres up to and including 100 acres is exempt
6 from review under this article if located wholly within a
7 municipality or municipalities meeting the requirements in
8 paragraphs A to C as determined by the department, except that
9 the department may review the development if the municipality in
10 which the development is located, or a neighboring municipality,
11 requests such a review and the department finds that the proposed
12 development may have a potentially serious environmental impact
13 or may significantly affect more than one municipality. The
14 requirements are as follows:

15
16 A. A municipal planning board or reviewing authority is
17 established and the municipality has adequate resources to
18 administer and enforce the provisions of its ordinances. In
19 determining whether this criterion is met, the commissioner
20 may consider any specific and adequate technical assistance
21 that is provided by a regional council;

22 B. The municipality has adopted site plan review
23 regulations that address issues reviewed under applicable
24 provisions of the site location of development laws prior to
25 July 1, 1997 and a process for case-by-case review of
26 structures is in place; and

27 C. The municipality has adopted subdivision regulations.
28 In determining the adequacy of these regulations, the
29 commissioner may consider model subdivision regulations
30 commonly used by municipalities in this State.

31
32 The department, in consultation with the State Planning Office,
33 shall publish a list of those municipalities determined to have
34 capacity pursuant to this subsection. The list must specify
35 whether a municipality has capacity to review structures or
36 subdivisions of lots for single-family, detached, residential
37 housing, common areas or open space or both types of
38 development. The department may recognize joint arrangements
39 among municipalities and regional organizations in determining
40 whether the requirements of this subsection are met. On and
41 after January 1, 2003, the department shall presume that each
42 municipality with a population of 2,500 or more has capacity as
43 provided in this subsection.

44
45 **Sec. B-23. 38 MRSA §489-A, sub-§1,** as amended by PL 1993, c.
46 383, §27 and affected by §42, is further amended to read:

47
48 **1. Kinds of projects.** The following kinds of projects may
49 be reviewed by registered municipalities pursuant to this section:
50

2 A. Subdivisions as described in section 482, subsection 5
of more than 20 acres but less than 100 acres;

4
6 ~~D. Structures as described in section 482, subsection 6,
paragraph B in excess of 3 acres but less than 7 acres; or~~

8 F. Excavation on more than 5 acres of land for borrow,
topsoil, clay or silt, whether alone or in combination as
10 described in section 482, subsection 2-B; or

12 G. A project generating 100 to 200 passenger car
equivalents at peak hour.

14 **Sec. B-24. 38 MRSA §489-D** is enacted to read:

16 **§489-D. Technical assistance to municipalities**

18 A state department or agency shall provide technical
20 assistance to a municipality in the form of a peer review of
development studies when the state capacity and resources exist.

22 1. Costs. A state department or agency may charge a
24 municipality for this assistance under this section. A
municipality may recover these costs from the developer.

26 2. Type of development. The following provisions apply to
28 assistance under this section.

30 A. Assistance is available for the review of site location
32 issues arising from a proposal for a subdivision of at least
5 lots and 20 acres and for a proposal for a development
34 that has at least 3 acres of buildings, parking lots, roads,
paved areas, wharves or areas to be stripped or graded and
not revegetated and not subject to review by the department
36 under this article.

38 B. A municipality may also obtain technical assistance in
the form of a peer review from a private consultant or
40 regional council and may recover costs from the developer
for a project of any size. The State Planning Office has
42 the authority to establish rules as necessary for this
purpose.

44 **Sec. B-25. Transition provisions.**

46 1. A permit issued pursuant to the Maine Revised Statutes,
48 Title 38, chapter 3, subchapter I, article 6 prior to the
effective date of this Act remains in effect, as written, until

2 rescinded pursuant to Title 38, section 489-C or modified by the
Department of Environmental Protection.

4 2. A project that requires a permit issued pursuant to the
Maine Revised Statutes, Title 38, chapter 3, subchapter I,
6 article 6 prior to the effective date of this Act for a
subdivision or a structure that would not require a permit if
8 proposed after the effective date of this Act must continue to
meet the standards of the site location of development laws in
10 Title 38, chapter 3, subchapter I, article 6 when applying for a
modification except that additional facilities, lots, roads or
12 any portions of the project that are proposed to be located in
new areas that were not identified as protected or part of the
14 development during the licensing process, as determined by the
Department of Environmental Protection, do not require review
16 unless the additional portions would themselves require review
after the effective date of this Act.

18 3. A municipality with delegated authority pursuant to the
Maine Revised Statutes, Title 38, section 489-A prior to the
20 effective date of this Act continues to have delegated authority
following the effective date of this Act and is presumed to have
22 capacity pursuant to Title 38, section 489-D as of the effective
date of this Act.

26 **Sec. B-26. Report; permit-granting authority.** The Department of
Transportation, in consultation with the Department of
28 Environmental Protection and others as appropriate, shall
determine the alternatives for a transfer of responsibilities
30 regarding permit-granting authority relating to traffic, and
report to the First Regular Session of the 119th Legislature no
32 later than February 1, 1999. The report of the Department of
Transportation must include any necessary implementing
34 legislation.

36 Unless a transfer of the permit-granting authority to the
Department of Transportation occurs earlier, and notwithstanding
38 any other provision of law, beginning June 30, 1999, the
Department of Transportation has permit-granting authority
40 relating to traffic. In the event of a transfer, a proposed
development subject to review under the Maine Revised Statutes,
42 Title 38, chapter 3, subchapter I, article 6, solely because it
meets the traffic threshold provisions of Title 38, section 482,
44 subsection 2, is subject only to the jurisdiction of the
Department of Transportation. Projects subject to review under
46 Title 38, chapter 3, subchapter I, article 6 on grounds
including, but not limited to, the traffic threshold are subject
48 to the joint jurisdiction of the Department of Environmental

Protection and the Department of Transportation and this joint jurisdiction must be exercised through a consolidated proceeding.

Sec. B-27. Development of recommendations. The Land and Water Resources Council, established in the Maine Revised Statutes, Title 5, section 3331, shall form a committee consisting of representatives of the Department of Environmental Protection, the Office of the State Fire Marshal, the Board of Pesticides Control, the Maine Emergency Management Agency, affected industries and municipal and other public interests to discuss and study the requirements of a uniform system for the registration, storage and handling of petroleum products, hazardous materials and other substances with the potential to contaminate groundwater. The committee need not consider spill prevention, control and countermeasures plans and related procedures for activities regulated under Title 38, chapter 3, subchapter I, articles 7 and 8. The committee shall develop recommendations regarding required legislative or regulatory action and submit them to the Land and Water Resources Council no later than January 10, 1997. The Land and Water Resources Council may submit legislation based on these recommendations to the First Regular Session of the 118th Legislature no later than January 20, 1997.

The Department of Environmental Protection shall develop, in concert with the Department of Conservation, the Department of Human Services and other affected state agencies, water utilities, water bottlers and other interested parties, a program to minimize the potential for unreasonable adverse impact on the availability of groundwater to support existing uses. This program may have both regulatory and nonregulatory components and must assess the availability of groundwater in different regions of this State to support future development without unreasonable adverse impacts on existing uses or the natural environment. The Department of Environmental Protection shall present recommendations for any statutory requirements to the Land and Water Resources Council no later than January 10, 1997. The Land and Water Resources Council may submit legislation based on these recommendations to the First Regular Session of the 118th Legislature no later than January 20, 1997.

Sec. B-28. Memorandum of agreement. The Department of Environmental Protection and the Department of Human Services shall identify changes to the subsurface wastewater disposal rules and other relevant rules and statutes needed to address the potential for adverse impacts on groundwater quality from engineered disposal fields and the Department of Human Services shall adopt any such changes to its rules. The Department of Environmental Protection and the Department of Human Services shall enter into a memorandum of agreement no later than 30 days

2 after the effective date of this Act under which the Department
of Environmental Protection shall provide review of potential
4 water quality impacts from large disposal systems.

6 PART C

8 **Sec. C-1. 30-A MRSA §4452, sub-§7**, as corrected by RR 1993, c.
1, §77, is amended to read:

10 **7. Natural resources protection laws.** A code enforcement
12 officer, authorized by a municipality to represent that
municipality in District Court and certified by the ~~Commissioner~~
14 ~~of Human Services~~ State Planning Office under section 4221 as
familiar with court procedures, may enforce the provisions of the
16 natural resources protection laws, Title 38, chapter 3,
subchapter I, article 5-A and Title 38, section 420-C, by
18 instituting injunctive proceedings or by seeking civil penalties
in accordance with Title 38, section 349, subsection 2.

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

22 §420-C. Erosion and sedimentation control

24 A person who conducts, or causes to be conducted, an
26 activity that involves filling, displacing or exposing soil or
other earthen materials must prevent eroded material from leaving
28 the project site or entering a protected natural resource as
defined in section 480-B. Properly installed erosion control
30 measures must be in place and any drainage ditches and channels
must be stabilized before the activity begins. Measures must
32 remain in place and functional until the site is permanently
stabilized. Adequate and timely temporary and permanent
34 stabilization measures must be taken.

36 This section applies to projects located in whole or in part
within an organized area of this State and does not apply to
38 agricultural fields. This section may not be construed to limit
a municipality's authority under home rule to adopt ordinances
40 containing stricter standards than those contained in this
section. The department may enforce this section.

42 §420-D. Storm water management

44 A person may not construct, or cause to be constructed, a
46 project that includes 20,000 square feet or more of impervious
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
or more of impervious area or 5 acres or more of disturbed area
50 in any other area without prior approval from the department. A
person proposing a project shall apply to the department for a

2 permit using an application provided by the department. This
3 section applies to any project that is located in whole or in
4 part within an organized area of this State.

5 1. Standards. The department shall adopt rules specifying
6 quantity and quality standards for storm water.

7 2. Review. If the applicant is able to meet the standards
8 for storm water using solely vegetative means, the department
9 shall review the application within 30 calendar days. If
10 structural means are used to meet those standards, the department
11 shall review the application within 60 days. The review period
12 begins upon receipt of a complete application and may be extended
13 pursuant to section 344-B. The department may request additional
14 information necessary to determine whether the standards of this
15 section are met. The application is deemed approved if the
16 department does not notify the applicant within the applicable
17 review period.

18 The department may allow a municipality or a quasi-municipal
19 organization, such as a watershed management district, to
20 substitute a management system for storm water, approved by the
21 department, for the permit requirement applicable to projects in
22 a designated area of the municipality.

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

36 4. Relationship to other laws. A project requiring review
37 by the department pursuant to any of the following provisions is
38 not required to obtain a permit pursuant to this section but may
39 be required to meet standards for management of storm water
40 adopted pursuant to this section: article 5-A, protection of
41 natural resources; article 6, site location of development;
42 article 7, performance standards for excavations for borrow,
43 clay, topsoil or silt; article 8-A, performance standards for
44 quarries; and sections 631 to 636, permits for hydropower
45 projects.

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

6 6. Exemptions. The following exemptions apply.

8 A. Forest management activities, including associated road
9 construction or maintenance, do not require review pursuant
10 to this section if any road construction is used primarily
11 for forest management activities and is not used to access
12 development.

14 B. Disturbing areas for the purpose of normal farming
15 activities such as clearing of vegetation, plowing, seeding,
16 cultivating, minor drainage and harvesting does not require
17 review pursuant to this section.

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

30 7. Enforcement. A violation of this article is any
31 activity that takes place contrary to the provisions of a valid
32 permit issued under this article or without a permit having been
33 issued for that activity. Each day of a violation is a separate
34 offense. A finding that any such violation has occurred is prima
35 facie evidence that the activity was performed or caused to be
36 performed by the owner of the property where the violation
37 occurred.

38 8. Fees. An applicant shall pay a fee to the department as
39 follows.

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

44 (1) If structural means are used, the fee is \$500 for
45 20,000 square feet up to one acre of impervious area,
46 plus \$250 for each additional whole acre of impervious
47 area.

2 (2) If solely vegetative means are used, the fee is
3 \$250 for 20,000 square feet up to one acre of
4 impervious area, plus \$125 for each additional whole
5 acre of impervious area.

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

8 (1) If structural means are used, the fee is \$500 for
9 5 acres, plus \$250 for each additional whole acre of
10 impervious area.

11 (2) If solely vegetative means are used, the fee is
12 \$250 for 5 acres, plus \$250 for each additional whole
13 acre of impervious area.

14 C. When a permit by review is required as provided by rules
15 adopted by the department, the fee is \$35.

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17
18
19
20 If the project described in paragraph A or B is reviewed and
21 approved by a professional engineer at a national resources
22 conservation office that has a memorandum of understanding with
23 the department concerning review of projects pursuant to this
24 section, the fee is reduced to \$100 for 20,000 square feet up to
25 one acre of impervious area or 5 acres of disturbed area, plus
26 \$50 for each additional whole acre.

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

30
31 **Sec. C-3. Coordination.** In cases in which an application is
32 also required to obtain a storm water permit from the United
33 States Environmental Protection Agency, the Department of
34 Environmental Protection shall coordinate its requirements with
35 the federal Environmental Protection Agency to eliminate
36 duplicative requirements and submittals.

37
38 **Sec. C-4. Transition provisions applicable to the Maine Revised**
39 **Statutes, Title 38, section 420-D.** Impervious areas and disturbed
40 areas created prior to the effective date of the Maine Revised
41 Statutes, Title 38, section 420-D are not counted when
42 determining the amount of impervious area or disturbed area on a
43 parcel. If review is required for impervious areas or disturbed
44 areas created on or after the effective date of Title 38, section
45 420-D, areas created prior to the effective date of Title 38,
46 section 420-D are not reviewed except to the extent necessary to
47 ensure that controls intended to address the new areas function
48 adequately.

49
50

2 New construction on an impervious area created prior to the
effective date of Title 38, section 420-D is not counted when
4 determining the amount of impervious area on a parcel.

6 PART D

8 **Sec. D-1. Effective date.** This Act takes effect on January 1,
1997.

10 **Sec. D-2. Retroactivity.** That section of this Act that repeals
12 the Maine Revised Statutes, Title 38, section 488, subsection 3
14 applies retroactively to July 3, 1980.

16 STATEMENT OF FACT

18 This bill amends the municipal subdivision laws by requiring
municipalities to prepare an estimate of the additional cost of
20 municipal and state services caused by a proposed development
based on guidelines prepared by the State Planning Office.

22 This bill amends the site location of development laws as
24 follows.

26 1. The list of developments regulated under the site
location of development laws is modified to exclude structures
28 from 3 to 7 acres in a municipality with adequate capacity to
review this type of development and implement review standards.

30 2. Developments that generate 100 or more passenger car
32 equivalents at peak hour are added to the list of developments
regulated under the site location of development laws. The
34 threshold for review of transmission lines is raised from 100 to
120 kilovolts.

36 3. The definition of "subdivision" is modified so that the
38 permit threshold for single-family residential subdivisions is
raised from 5 lots and 20 acres to 15 lots and 30 acres.

40 4. The standard concerning traffic movement is amended to
42 reflect a new numerical threshold of 100 or more passenger car
equivalents at peak hour. A development otherwise requiring
44 review under the site location of development laws, with traffic
below this threshold, does not have to meet this traffic
46 standard. A development not otherwise requiring review under the
site location of development laws, with traffic below this
48 threshold, does not require review. Specific provisions are
added to the Department of Transportation's role in reviews: the
50 use of a flexible system including performance standards for

2 developments that generate 100 to 200 passenger car equivalents
3 at peak hour; level of service; and eventual transfer of review
4 authority to the Department of Transportation. A separate
5 provision allows for an advance ruling by the Department of
6 Environmental Protection concerning whether the traffic
7 requirements would be met.

8 5. The soil types and erosion standards provisions are
9 amended and new standards are adopted.

10 6. Exemptions for certain residential subdivisions and
11 storage facilities are repealed.

12 7. The Department of Transportation, in consultation with
13 the Department of Environmental Protection, shall determine
14 alternatives for a transfer of responsibilities regarding
15 permit-granting authority relating to traffic, and report to the
16 Legislature no later than February 1, 1999. Unless a transfer
17 occurs earlier, permit-granting authority relating to traffic
18 vests in the Department of Transportation on June 30, 1999. The
19 Land and Water Resources Council is directed to form a committee
20 to develop recommendations concerning legislation required to
21 address the storage, use and handling of petroleum products,
22 hazardous materials and certain other substances with the
23 potential to contaminate groundwater. The Department of
24 Environmental Protection in concert with others is directed to
25 develop a program to minimize the potential for unreasonable
26 adverse impacts on the availability of groundwater to support
27 existing uses and present recommendations concerning any
28 statutory requirements to the Land and Water Resources Council.
29

30 The bill makes the following changes to the laws regarding
31 erosion and sedimentation control and storm water management.

32 1. Standards for erosion and sedimentation control are
33 established.

34 2. A review requirement for certain projects is established
35 and standards must be adopted by rule by the Department of
36 Environmental Protection for storm water quantity and quality.
37 The department must list watersheds of bodies of water most at
38 risk and work with the State Planning Office in identifying urban
39 bodies of water most at risk.
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