



# **118th MAINE LEGISLATURE**

## **FIRST REGULAR SESSION-1997**

Legislative Document

No. 1503

H.P. 1065

House of Representatives, March 12, 1997

An Act to Amend the Site Location of Development Laws.

(EMERGENCY)

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

JOSEPH W. MAYO, Clerk

Presented by Representative SHIAH of Bowdoinham. Cosponsored by Representatives: BULL of Freeport, COWGER of Hallowell, McKEE of Wayne, MERES of Norridgewock, ROWE of Portland, Senator: TREAT of Kennebec. Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, this Act must take effect prior to July 1, 1997 in order to correct several conflicts of law; and

8 Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of 10 Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and 12 safety; now, therefore,

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

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Sec. 1. 38 MRSA §488, sub-§19, as enacted by PL 1995, c. 704, Pt. A, §20 and affected by Pt. C, §2, is amended to read:

Municipal capacity. A structure, as defined in section 19. 482, subsection 6, that is from 3 acres up to and including 7 20 acres or a subdivision, as defined in section 482, subsection 5, that is made up of 15 or more lots for single-family, detached, 22 residential housing, common areas or open space with an aggregate area of from 30 acres up to and including 100 acres is exempt 24 from review under this article if located wholly within a municipality or municipalities having delegated review pursuant 26 to section 489-A or meeting the criteria in paragraphs A to C as 28 determined by the department. The planning board of the municipality in which the development is located or an adjacent 30 municipality may petition the commissioner to review such a structure or subdivision if it has regional environmental 32 impacts. This petition must be filed within 20 days of the the application by the municipality. receipt of State 34 jurisdiction must be exerted, if at all, within 30 days of receipt of the completed project application by the commissioner from the municipality or within 30 days of receipt of any 36 modification to that application from the municipality. Review department is limited to 38 by the the identified regional environmental impacts. The criteria are as follows:

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

B. The municipality has adopted a site plan review ordinance. In determining the adequacy of the ordinance,
the commissioner may consider model site plan review

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ordinances commonly used by municipalities in this State that address the issues reviewed under applicable provisions of this article prior to July 1, 1997; and

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

10 In determining the adequacy of both the municipality's site plan review ordinance and subdivision regulations, the department must 12 find that these ordinances include protection of wildlife habitat, fisheries, unusual natural areas and archaeological and 14 historic sites.

The department, in consultation with the State Planning Office, 16 shall publish a list of those municipalities determined to have 18 capacity pursuant to this subsection. This list need not be established by rule and must be published by January 1, 1997. If the department fails to publish the list by January 1, 1997, 20 municipalities with a site plan or subdivision ordinances or regulations are deemed to have capacity for corresponding 22 projects until January 1, 1998, or until the list is published, whichever period is longer. The list must specify whether a 24 municipality has capacity to review structures or subdivisions of lots for single-family, detached, residential housing, common 26 areas or open space or both types of development. The department among municipalities 28 may recognize joint arrangements and regional organizations in determining whether the requirements of 30 this subsection are met. On--and-after--January--Lr-2003---the department--shall--irrebuttably--presume--and--publish--that--each municipality-with-a-population-of-2,500-or-more,-ac-measured-by 32 the -- United -- States - Census - of -- the -- year -- 2000 -- has - capacity -- as 34 provided-in-this-subsection.

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#### Sec. 2. 38 MRSA §489-A, sub-§2, ¶D-2 is enacted to read:

D-2. Land use regulations have been adopted that include 3.8 the protection of wildlife habitat, fisheries, unusual natural areas and archaeological and historic sites in or 40 adjacent to the subdivision consistent with the standards established under section 484 and the rules adopted pursuant 42 to that section. For 2 years following a decision to 44 register a municipality to review subdivisions, the commissioner shall review all decisions of the municipality on those subdivisions. The commissioner shall suspend the 46 authority of the municipality to review subdivisions if the commissioner determines that the municipal review of those 48 subdivisions for the protection of fisheries and wildlife

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habitat, unusual natural areas and archaeological and historic sites was inadequate;

4 Sec. 3. Training for towns. The Department of Environmental Protection shall coordinate with the Department of Inland 6 Fisheries and Wildlife to provide training to local planning boards and code enforcement officers on developing and 8 implementing effective review and protection strategies under the provisions of this Act.

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Sec. 4. Transition. Department The of Environmental Protection shall consult with each town registered prior to the 12 effective date of this Act to review subdivisions to ensure that, no later than January 1, 2000, those towns have either chosen to 14 continue reviewing those subdivisions in compliance with the 16 provisions of this Act or have chosen to forego registration for those subdivisions.

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

#### SUMMARY

Current law allows a municipality to substitute its site law 26 permit for a permit from the Department of Environmental Protection if the municipality meets certain eligibility criteria.

This bill requires that a town, before it can qualify to 30 substitute its permit for a Department of Environmental Protection permit for subdivision review, have site law 32 ordinances that require those subdivisions to be reviewed for impacts on fisheries and wildlife habitat, unusual natural areas 34 and archaeological and historic sites in or adjacent to the subdivisions.

The bill also repeals the provision of law that creates an irrebuttable presumption that towns with a population over 2,500 have the capacity to conduct site law reviews after January 1, 2003.

42 The bill also requires that the Department of Environmental Protection coordinate with the Department of Inland Fisheries and 44 Wildlife to provide training to local planning boards and code enforcement officers on developing and implementing effective 46 review and protection strategies. Towns that have already been registered to review those types of subdivisions have until 48 January 1, 2000 to choose whether to continue reviewing them or to forego that authority.