

MAINE STATE LEGISLATURE

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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.

A handwritten signature in black ink that reads "Joseph W. Mayo".

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.

2 **Emergency preamble.** Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4
6 **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:**

16 **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:

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

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

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

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.

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

The department, in consultation with the State Planning Office, shall publish a list of those municipalities determined to have 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, municipalities with a site plan or subdivision ordinances or regulations are deemed to have capacity for corresponding projects until January 1, 1998, or until the list is published, whichever period is longer. The list must specify whether a municipality has capacity to review structures or subdivisions of lots for single-family, detached, residential housing, common areas or open space or both types of development. The department may recognize joint arrangements among municipalities and regional organizations in determining whether the requirements of this subsection are met. ~~On and after January 1, 2003, the department shall irrefutably presume and publish that each municipality with a population of 2,500 or more, as measured by the United States Census of the year 2000, has capacity as provided in this subsection.~~

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

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

