

# MAINE STATE LEGISLATURE

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# 119th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1999

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Legislative Document

No. 2132

S.P. 756

In Senate, March 31, 1999

**An Act to Consolidate Traffic Movement Permits within the Department  
of Transportation.**

(EMERGENCY)

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Submitted by the Department of Transportation pursuant to Joint Rule 204.  
Reference to the Committee on Transportation suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator O'GARA of Cumberland.  
Cosponsored by Representative BOUFFARD of Lewiston and  
Senators: BENNETT of Oxford, LONGLEY of Waldo, Representative: CAMERON of  
Rumford.

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, under current law, the Department of Environmental  
Protection issues traffic movement permits pursuant to the site  
location of development laws; and

8  
10           Whereas, Public Law 1995, chapter 704 requires that this  
permit-granting authority be transferred to the Department of  
Transportation beginning June 30, 1999; and

12  
14           Whereas, this Act contains the necessary implementing  
legislation to accomplish this transfer of permit-granting  
authority; and

16  
18           Whereas, in the judgment of the Legislature, these facts  
create an emergency within the meaning of the Constitution of  
Maine and require the following legislation as immediately  
20 necessary for the preservation of the public peace, health and  
safety; now, therefore,

22  
24           **Be it enacted by the People of the State of Maine as follows:**

26           **Sec. 1. 23 MRSA §651, 6th ¶,** as enacted by PL 1991, c. 409,  
§3, is amended to read:

28           The department, at its discretion, may authorize a person,  
corporation or entity who has had conditions imposed by--the  
30 ~~Department of Environmental Protection pursuant to Title 38,~~  
~~section 484, subsection 2~~ pursuant to Title 23, section 704-A or  
32 by other governmental review to perform construction work on the  
state or state aid highway system and on town ways. The  
34 performance of the work must be in compliance with the  
department's standards for highway and bridge construction,  
36 traffic control and bonding and any other standards or conditions  
the department may impose. All of the department's expenses and  
38 administrative costs relating to the work must be paid by the  
person authorized to perform the work. Notwithstanding the Maine  
40 Tort Claims Act, Title 14, chapter 741, the State or its  
employees are immune from suit for damages arising from any  
42 activities performed in connection with this work.

44           **Sec. 2. 23 MRSA §704-A** is enacted to read:

46           **§704-A. Traffic movement permit**

48           **1. Definitions.** As used in this section, unless the  
context otherwise indicates, the following terms have the  
50 following meanings.

2           A. "Department" means the Department of Transportation.

4           B. "Passenger car equivalents at peak hour" means the  
6           number of passenger cars or, in the case of nonpassenger  
8           vehicles, the number of passenger cars that would be  
10           displaced by nonpassenger vehicles at that hour of the day,  
12           during which the traffic volume generated by the development  
14           is higher than the volume during any other hour of the day.  
          For purposes of this paragraph, one tractor-trailer  
          combination is the equivalent of 2 passenger cars. A  
          project constructed with no specified or limited use must be  
          treated as if it will generate the maximum feasible volume  
          of traffic.

16           C. "Project" includes any construction, alteration or  
18           conversion of a building, or any development that may  
          substantially affect the environment pursuant to Title 38,  
20           section 483-A.

2. Permit. A traffic movement permit must be obtained from  
22           the department for any project that generates 100 or more  
24           passenger car equivalents at peak hour. A person receiving a  
          permit under this section is not required to obtain a permit  
26           pursuant to section 704.

A. For any project that generates 100 or more passenger car  
28           equivalents at peak hour, the person responsible for the  
30           project is required to make adequate provision for traffic  
32           movement of all types into and out of the project area.  
34           Before issuing a permit, the department shall determine that  
          any traffic increase attributable to the proposed project  
          will not result in unreasonable congestion or unsafe  
          conditions on a road in the vicinity of the proposed project.

36           B. The department, together with the appropriate  
38           representative of the municipality or municipalities where  
40           the project is located, shall discuss with the applicant the  
42           scope of impact evaluation required for the proposed project  
44           and the type of proceedings warranted. The applicant shall  
46           provide notice to abutting municipalities. The department  
48           shall determine the appropriate scope of evaluation and  
          information required. If the department determines as a  
          result of these communications that the applicant has  
          demonstrated that the proposed project satisfies standards  
          adopted for projects that generate 100 to 200 passenger car  
          equivalents at peak hour and the department determines that  
          there are no other significant traffic-related issues  
50           presented, the department may issue a permit to the  
          applicant without further proceedings.

2           C. If a project is located in an area designated as a  
4           growth area in a local growth management plan that has been  
6           found by the State to be consistent with the growth  
8           management program in Title 30-A, chapter 187, or if a  
          project is located within the compact area of an urban  
          compact municipality, the required improvements are limited  
          only to those necessary to mitigate the impacts of the  
          project.

10           D. If a project is located in an area designated as a  
12           growth area in a local growth management plan that has been  
14           found by the State to be consistent with the growth  
16           management program in Title 30-A, chapter 187, or if a  
18           project is located within the compact area of an urban  
20           compact municipality, or if a project is on a former  
22           military base pursuant to Title 38, section 488, subsection  
          15, and when the project consists of conversion of an  
          existing facility and the project does not have an entrance  
          or exit on a federally classified arterial highway, the  
          required improvements are limited only to the entrances and  
          exits of the project.

24           E. Adequate provision for traffic movement may be provided  
26           through payment of funds pursuant to section 57-A.

28           F. Prior to issuing a traffic movement permit, the  
30           department must find that the applicant has right, title or  
32           interest to the property necessary to execute the  
34           traffic-related conditions of the permit, and that no  
36           inconsistent control of access provision exists with respect  
          to access to the property. The department shall also advise  
          the applicant that following issuance of the permit yet  
          prior to construction of any improvements affecting the  
          right-of-way of the department, the applicant must  
          demonstrate through a developer agreement the financial,  
          legal and technical ability to develop such improvements.

38           3. Exemptions. A permit is not required for any project  
40           reviewed under Title 38, section 1310-N, 1319-R or 1319-X. A  
42           permit is not required for any project exempt from review under  
44           Title 38, chapter 3, subchapter I, article 6 pursuant to Title  
          38, section 488, subsection 7 or subsection 18.

46           4. Registered municipalities. The department may register  
48           municipalities for issuing traffic movement permits under this  
          section for projects generating 100 or 200 passenger car  
          equivalents at peak hours upon finding that:

2 A. The municipality has in effect an ordinance or  
4 regulation for reviewing traffic movement permits that is  
6 consistent with the policy and purpose of this section; and

8 B. The ordinance or regulation is administrable and  
10 enforceable and will be properly administered and enforced.

12 Whenever any of the conditions set forth in this subsection are  
14 no longer being met, the department shall resume promptly the  
16 administration of reviewing traffic movement permits upon written  
18 notice to the municipality.

20 On a project-by-project basis, upon a determination by the  
22 department that there will be no adverse traffic impact in a  
24 municipality other than the municipality in which the project is  
26 located, the department may register any municipality for issuing  
28 traffic movement permits under this section for any project  
30 generating more than 200 passenger car equivalents at peak hour.

32 The department may provide technical assistance to municipalities  
34 upon request for projects reviewed under this section.

36 The department may review projects for registered municipalities  
38 if the local reviewing authority for the municipality in which  
40 the project is located petitions the department in writing. Any  
42 neighboring municipality affected by the project may petition the  
44 department in writing to review the project no later than 30 days  
46 after it has been approved by the local reviewing authority.

48 5. Hearings. Hearings and requests for hearings under this  
section must be in accordance with the following provisions:

A. If the department issues an order without a hearing, the  
applicant may request, in writing, a hearing before the  
department within 30 days after notice of the department's  
decision. This request must set forth, in detail, the  
findings and conclusions of the department to which that  
person objects, the basis of the objections and the nature  
of the relief requested. Upon receipt of the request, the  
department may schedule and hold a hearing limited to the  
matters set forth in the request.

B. At the hearings held under this section, the burden is  
upon the person proposing the development to demonstrate  
affirmatively to the department that each of the criteria  
for approval listed in this section has been met and that  
the public's health, safety and general welfare will be  
adequately protected.

2 C. After the department adjourns any hearing held under  
4 this section, the department shall make findings of fact and  
6 issue an order granting or denying permission to the person  
8 proposing the development to construct or operate the  
development, as proposed, or granting that permission upon  
such terms and conditions as the department considers  
advisable to protect and preserve the environment and the  
public's health, safety and general welfare.

10 6. Fees. The department shall assess fees for the issuance  
12 and processing of a permit under this section. Fees may not  
14 exceed \$500 for issuance of a permit following a scoping meeting  
as described in section 704-A, subsection 2, paragraph B, with no  
further review. Fees may not exceed \$2,000 for issuance of a  
permit requiring review beyond a scoping meeting.

16 7. Consolidation. If an applicant is required to obtain  
18 both a permit from the department pursuant to this section and a  
20 permit under the site location of development laws from the  
22 Department of Environmental Protection pursuant to Title 38,  
24 chapter 3, subchapter I, article 6, the applicant may either  
apply individually to each agency for the appropriate permit or  
request that the department and the Department of Environmental  
Protection provide a consolidated application process.

26 A. On the request of an applicant prior to the submission  
28 of applications for permits pursuant to this section and  
Title 38, chapter 3, subchapter I, article 6, the department  
30 and the Department of Environmental Protection shall provide  
a consolidated application process. As long as an  
32 application is not withdrawn, the process must result in a  
consolidated order issued by both the department and the  
34 Department of Environmental Protection, either approving or  
denying the applicable permits. Any necessary findings or  
36 conditions relevant to the individual permits must be  
separately identified in the order. All applicable fees and  
38 the longer of the applicable processing times apply. The  
40 processing period may be extended pursuant to Title 38,  
section 344-B, subsection 3 or if a hearing is required  
pursuant to subsection 5.

42 B. If an aggrieved party seeks an administrative appeal of  
44 a consolidated order, and there are issues relevant to both  
permits, the department and the Department of Environmental  
46 Protection shall provide a consolidated administrative  
appeal process. For purposes of a consolidated  
48 administrative appeal, administrative procedures applicable  
to appeals before the Board of Environmental Protection  
apply. If there are issues relevant to only one permit, the





2	<del>Seoping-meeting</del>		
	<del>with-no-further-review</del>	500	0
4	<del>Seoping-meeting-with</del>		
	<del>further-review</del>	500	1,500
6	<del>"Seoping-meeting"-refers</del>		
	<del>to-the-process-described</del>		
	<del>in-section-484,-subsection</del>		
8	<del>2,-paragraph-B</del>		
	E. Other	1,000	1,000

10           **Sec. 5. 38 MRSA §481, last ¶**, as enacted by PL 1995, c. 704,  
 12 Pt. A, §2 and affected by Pt. C, §2, is repealed.

14           **Sec. 6. 38 MRSA §482, sub-§2, ¶D**, as repealed and replaced by  
 16 PL 1997, c. 502, §5, is amended to read:

18           D. Is a subdivision as defined in this section; or

20           **Sec. 7. 38 MRSA §482, sub-§2, ¶E**, as repealed and replaced by  
 PL 1997, c. 502, §5, is repealed.

22           **Sec. 8. 38 MRSA §482, sub-§3-C**, as enacted by PL 1995, c. 704,  
 24 Pt. A, §4 and affected by Pt. C, §2, is repealed.

26           **Sec. 9. 38 MRSA §484, sub-§2**, as amended by PL 1997, c. 502,  
 §7, is repealed.

28           **Sec. 10. 38 MRSA §484, sub-§6**, as amended by PL 1993, c. 383,  
 30 §22 and affected by §42, is further amended to read:

32           **6. Infrastructure.** The developer has made adequate  
 provision of utilities, including water supplies, sewerage  
 34 facilities, and solid waste disposal and roadways, required for  
 the development, and the development will not have an  
 36 unreasonable adverse effect on the existing or proposed utilities  
and roadways in the municipality or area served by those services.

38           **Sec. 11. 38 MRSA §485-A, sub-§1-B**, as enacted by PL 1995, c.  
 40 704, Pt. A, §12 and affected by Pt. C, §2, is repealed.

42           **Sec. 12. 38 MRSA §488, sub-§14, ¶A**, as amended by PL 1995, c.  
 44 704, Pt. A, §19 and affected by Pt. C, §2, is further amended to  
 read:

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

2 (1) A municipality that has adopted a local growth  
management program that the State Planning Office has  
4 certified under Title 30-A, section 4348; and

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

8 An applicant claiming an exemption under this paragraph  
shall include with the application a statement from the  
10 State Planning Office affirming that the location of the  
proposed development meets the provisions of subparagraphs  
12 (1) and (2).

14 An applicant claiming an exemption under this paragraph  
shall publish a notice of that application in a newspaper of  
16 general circulation in the region that includes the  
municipality in which the development is proposed to occur.  
18 That notice must include a statement indicating the standard  
or standards for which the applicant is claiming an  
20 exemption.

22 **Sec. 13. 38 MRSA §488, sub-§14, ¶B,** as amended by PL 1995, c.  
462, Pt. A, §75, is further amended to read:

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

36 (1) Within 15 working days after the publication of  
the notice required under paragraph A, municipal  
38 officers or residents of the municipality in which the  
development is proposed to occur or municipal officers  
40 or residents of an abutting municipality may petition  
the commissioner to apply one or more of the standards  
42 for which an exemption is claimed under this  
subsection. A petition must be signed either by the  
44 municipal officers of the petitioning municipality or  
by 10% of that number of registered voters of the  
46 petitioning municipality casting ballots in the most  
recent gubernatorial election or 150 registered voters  
48 of the petitioning municipality, whichever is less.  
The petition must include the name and legal address of  
50 each signatory and must designate one signatory as the

2 contact person. The commissioner shall notify the  
3 contact person and the applicant of the commissioner's  
4 decision within 10 working days after receipt of a  
5 petition meeting the requirements of this subsection.  
6 A decision by the commissioner under this subparagraph  
is appealable to the board.

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

12 **Sec. 14. 38 MRSA §489-A, sub-§1, ¶A,** as amended by PL 1997, c.  
13 393, Pt. A, §46, is further amended to read:

14 A. Subdivisions as described in section 482, subsection 5  
15 of more than 20 acres but less than 100 acres~~+-0F.~~

16 **Sec. 15. 38 MRSA §489-A, sub-§1, ¶G,** as enacted by PL 1995, c.  
17 704, Pt. A, §21 and affected by Pt. C, §2, is repealed.

18 **Sec. 16. 38 MRSA §490-D, sub-§11, ¶B,** as enacted by PL 1995,  
19 c. 700, §24, is amended to read:

20 B. Any excavation activity that generates 100 or more  
21 passenger car equivalents at peak hour must comply with the  
22 applicable permit requirements under ~~article--6,---This~~  
23 ~~paragraph-takes-effect-July-1,-1997~~ Title 23, section 704-A.

24 **Sec. 17. 38 MRSA §490-Z, sub-§10, ¶B,** as enacted by PL 1995,  
25 c. 700, §35, is amended to read:

26 B. Any excavation activity that generates 100 or more  
27 passenger car equivalents at peak hour must comply with the  
28 applicable permit requirements under ~~article--6,---This~~  
29 ~~paragraph-takes-effect-July-1,-1997~~ Title 23, section 704-A.

30 **Sec. 18. Transition provision.** A permit issued pursuant to the  
31 site location of development laws prior to the effective date of  
32 this Act may be modified by the Department of Transportation for  
33 purposes of addressing issues relating to traffic movement and  
34 adequate provision of roads. The applicant shall send a copy of  
35 the application to the Department of Environmental Protection at  
36 the same time it is submitted to the Department of  
37 Transportation. The Department of Transportation shall notify  
38 the Department of Environmental Protection of any substantive  
39 changes in the proposal and provide the Department of  
40 Environmental Protection with a copy of the final approval.

2 A project must be constructed and operated in accordance  
with the definitions and standards contained in rules regarding  
4 the traffic movement standard of the site location of development  
law, 06-096 CMR 374, until such time as the Department of  
6 Transportation adopts rules pursuant to this Act.

8 **Emergency clause.** In view of the emergency cited in the  
preamble, this Act takes effect June 30, 1999.

10

## SUMMARY

12

14 Under current law, the Department of Environmental  
Protection issues traffic movement permits pursuant to the site  
16 location of development laws in the Maine Revised Statutes,  
Title 38, chapter 3, subchapter 1, article 6. Public Law 1995,  
chapter 704 requires that this permit-granting authority be  
18 transferred to the Department of Transportation beginning June  
30, 1999. This bill contains the necessary implementing  
20 legislation to accomplish the transfer of permit-granting  
authority.