

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1198

S.P. 360

In Senate, February 28, 2001

**An Act to Refine the Subdivision and Redistricting Authority of the
Maine Land Use Regulation Commission.**

Submitted by the Department of Conservation pursuant to Joint Rule 204.
Reference to the Committee on Agriculture, Conservation and Forestry 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 KILKELLY of Lincoln.
Cosponsored by Representative McKEE of Wayne and
Senator KNEELAND of Aroostook, Representatives: BERRY of Livermore, BUNKER of
Kossuth Township, DUNLAP of Old Town, JODREY of Bethel, LaVERDIERE of Wilton.

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

4 **Sec. 1. 12 MRSA §682, sub-§2**, as repealed and replaced by PL
1991, c. 687, §1, is repealed.

6 **Sec. 2. 12 MRSA §682, sub-§2-A** is enacted to read:

8 **2-A. Subdivision.** "Subdivision" means a division of an
10 existing parcel of land into 3 or more parcels or lots within any
12 5-year period, whether this division is accomplished by platting
of the land for immediate or future sale, by sale of the land or
by leasing.

14 The term "subdivision" also includes the division, placement or
16 construction of a structure or structures on a tract or parcel of
land resulting in 3 or more dwelling units within a 5-year period.

18 **Sec. 3. 12 MRSA §682, sub-§19** is enacted to read:

20 **19. Conditional zoning.** "Conditional zoning" means the
22 process by which the commission adopts or amends subdistrict
boundaries to permit the use of property subject to conditions
24 not generally applicable to other properties similarly zoned.

26 **Sec. 4. 12 MRSA §682-B** is enacted to read:

28 **§682-B. Exemption from subdivision definition**

30 A lot transferred in accordance with this section is not
considered a subdivision lot unless the intent of the transfer is
32 to avoid the objectives of this chapter.

34 **1. Gifts to relatives.** A division of land accomplished by
gift to a qualified person, unless the intent of that gift is to
36 avoid the objectives of this chapter, does not create a
subdivision as long as the donor has owned the property for a
38 continuous period of 5 years immediately prior to the division by
gift. If the property is transferred within 5 years following
40 the gift to a person who is not a qualified person, the exemption
granted pursuant to this section is disallowed, and the property
42 must be considered a lot or lots for purposes of this chapter.

44 As used in this subsection, "qualified person" means a spouse,
parent, grandparent, brother, sister, child or grandchild of the
46 donor of the land.

48 **2. Transfer to governmental entity.** A lot transferred to a
municipal or county entity, the State or an agency of the State
50 is not considered a subdivision lot when the following conditions
are met:

2 A. The land is held without further sale or division by the
4 government entity for the conservation and protection of
 natural resources or for public outdoor recreation for a
6 period of 20 years following the date of transfer; and

8 B. Prior to transfer, the transferee sends, written notice
 to the commission stating the intended land use.

10 3. Transfer to a conservation organization. A lot
12 transferred to a nonprofit, tax-exempt nature conservation
 organization qualifying under the United States Internal Revenue
14 Code, Section 501(c)(3) is not considered a subdivision lot when
 the following conditions are met:

16 A. For a period of at least 20 years following the
18 transfer, the lot must be limited by deed restriction or
 conservation easement for the protection of wildlife habitat
20 or ecologically sensitive areas, or for public outdoor
 recreation; and

22 B. The lot is not further divided or transferred except to
 another conservation organization or government entity.

24 4. Transfer of lots 1,000 acres or larger. A lot of 1,000
26 acres or more in size is not considered a subdivision lot when
 the following conditions are met:

28 A. The lot is transferred and managed solely for forest or
30 agricultural management or conservation; and

32 B. The lot is not further divided for at least 5 years.

34 Primitive recreation may be allowed on a lot transferred in
 accordance with this subsection.

36 **Sec. 5. 12 MRSA §685-A, sub-§8-A,** as enacted by PL 1999, c.
38 333, §10, is amended to read:

40 **8-A. Criteria for adoption or amendment of land use**
42 **district boundaries.** A land use district boundary may not be
 adopted or amended unless there is substantial evidence that:

44 A. The proposed land use district is consistent with the
46 standards for district boundaries in effect at the time, the
 comprehensive land use plan and the purpose, intent and
 provisions of this chapter; and

48 B. The proposed land use district satisfies a demonstrated
50 need in the community or area and has no undue adverse

2 impact on existing uses or resources or a new district
3 designation is more appropriate for the protection and
4 management of existing uses and resources within the
5 affected area.

6 The commission may use conditional zoning in the adoption or
7 amendment of land use district boundaries. All such zonings may
8 include only those conditions and restrictions that relate to the
9 development or use of the property and meet the criteria for
10 adoption outlined in this subsection.

12 **Sec. 6. 12 MRSA §685-B, sub-§6-A,** as enacted by PL 1991, c.
13 687, §2, is repealed.

14 **Sec. 7. 12 MRSA §685-B, sub-§6-B,** as enacted by PL 1997, c.
15 335, §1, is repealed.

16 **Sec. 8. 38 MRSA §480-Q, sub-§7-A, ¶D,** as enacted by PL 1989,
17 c. 838, §6, is amended to read:

18 D. Any road construction is not used to access development
19 but is used primarily for forest management activities,
20 unless the road is removed and the site restored to its
21 prior natural condition. Roads must be the minimum feasible
22 width and total length consistent with forest management
23 activities. This exemption does not apply to roads that
24 provide access to development in a subdivision as defined in
25 Title 30-A, section 4401, subsection 4, for the organized
26 portions of the State, or Title 12, section 682, subsection
27 2 ~~2-A~~, including divisions of land exempted by Title 12,
28 section ~~682, subsection 2, paragraph A~~ 682-B, for portions
29 of the State under the jurisdiction of the Maine Land Use
30 Regulation Commission.

31 **Sec. 9. Application.** This Act applies to any land division or
32 sale that would constitute a subdivision occurring after the
33 effective date of this Act. It does not apply to lots that were
34 created or sold prior to the effective date in accordance with
35 all the legal requirements in existence at the time.

42 SUMMARY

43 This bill amends several provisions of the Maine Land Use
44 Regulation Commission law that relate to lot creation,
45 subdivision and zoning and amends the commission's zoning, or
46 redistricting, authority.

47 This bill does the following:

48
49
50

1. It eliminates a reporting requirement imposed on
2 landowners creating exempt lots;

4 2. It amends the language on gift lots to limit the types
of individuals qualified to receive a gift lot, places a
6 requirement that a lot must be held for 5 years immediately prior
to the creation of any gift lot, requires that a recipient of a
8 gift lot hold that lot for at least 5 years for it to remain
exempt and eliminates the 40-acre lot exemption;

10 3. It adds language that exempts lots conveyed to certain
12 governmental entities and conservation organizations as well as
lots in excess of 1,000 acres that are devoted to forest or
14 agricultural management;

16 4. It eliminates the requirement for filing of a land
division plan, which becomes unnecessary without the exemption
18 for 40-acre lots located no closer than 1,320 feet of a great
pond or river or 250 feet of wetland and divided into no more
20 than 10 lots within a 5-year period;

22 5. It provides the commission the authority and criteria by
which to use conditional zoning; and

24 6. It provides for the application only to land division or
26 sales after the effective date of the bill.