

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

SECOND REGULAR SESSION-2006

Legislative Document

No. 1802

S.P. 719

In Senate, December 30, 2005

An Act To Sustain Good Local Planning Practices

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Secretary of the Senate on December 28, 2005. Referred to the Committee on Natural Resources pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 218.

A handwritten signature in cursive script, reading 'Joy J. O'Brien'.

JOY J. O'BRIEN
Secretary of the Senate

Presented by President EDMONDS of Cumberland.
Cosponsored by Representative WEBSTER of Freeport.

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

4 **Whereas,** on January 1, 2006 current law will invalidate
6 local ordinances that define a subdivision as the creation of 2
lots in a 5-year period; and

8 **Whereas,** good local planning practices are advanced by the
10 implementation of such ordinances; and

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

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

20 **Sec. 1. 30-A MRSA §4401, sub-§4,** as amended by PL 2001, c.
651, §§1 to 3, is further amended to read:

22 **4. Subdivision.** "Subdivision" Except as provided in
24 paragraph H-2, "subdivision" means the division of a tract or
parcel of land into 3 or more lots within any 5-year period that
26 begins on or after September 23, 1971. This definition applies
whether the division is accomplished by sale, lease, development,
28 buildings or otherwise. The term "subdivision" also includes the
division of a new structure or structures on a tract or parcel of
30 land into 3 or more dwelling units within a 5-year period, the
construction or placement of 3 or more dwelling units on a single
32 tract or parcel of land and the division of an existing structure
or structures previously used for commercial or industrial use
34 into 3 or more dwelling units within a 5-year period.

36 A. In determining whether a tract or parcel of land is
divided into 3 or more lots, the first dividing of the tract
38 or parcel is considered to create the first 2 lots and the
next dividing of either of these first 2 lots, by whomever
40 accomplished, is considered to create a 3rd lot, unless:

42 (1) Both dividings are accomplished by a subdivider
who has retained one of the lots for the subdivider's
44 own use as a single-family residence that has been the
subdivider's principal residence for a period of at
46 least 5 years immediately preceding the 2nd division; or

48 (2) The division of the tract or parcel is otherwise
exempt under this subchapter.

50

2 B. The dividing of a tract or parcel of land and the lot or
lots so made, which dividing or lots when made are not
4 subject to this subchapter, do not become subject to this
subchapter by the subsequent dividing of that tract or
6 parcel of land or any portion of that tract or parcel. The
municipal reviewing authority shall consider the existence
8 of the previously created lot or lots in reviewing a
proposed subdivision created by a subsequent dividing.

10 C. A lot of 40 or more acres must be counted as a lot,
except:

12 (2) When a municipality has, by ordinance, or the
14 municipal reviewing authority has, by regulation,
elected not to count lots of 40 or more acres as lots
16 for the purposes of this subchapter when the parcel of
land being divided is located entirely outside any
18 shoreland area as defined in Title 38, section 435 or a
municipality's shoreland zoning ordinance.

20 D-1. A division accomplished by devise does not create a
22 lot or lots for the purposes of this definition, unless the
intent of the transferor is to avoid the objectives of this
24 subchapter.

26 D-2. A division accomplished by condemnation does not
create a lot or lots for the purposes of this definition,
28 unless the intent of the transferor is to avoid the
objectives of this subchapter.

30 D-3. A division accomplished by order of court does not
32 create a lot or lots for the purposes of this definition,
unless the intent of the transferor is to avoid the
34 objectives of this subchapter.

36 D-4. A division accomplished by gift to a person related to
the donor of an interest in property held by the donor for a
38 continuous period of 5 years prior to the division by gift
does not create a lot or lots for the purposes of this
40 definition, unless the intent of the transferor is to avoid
the objectives of this subchapter. If the real estate
42 exempt under this paragraph is transferred within 5 years to
another person not related to the donor of the exempt real
44 estate as provided in this paragraph, then the previously
exempt division creates a lot or lots for the purposes of
46 this subsection. "Person related to the donor" means a
spouse, parent, grandparent, brother, sister, child or
48 grandchild related by blood, marriage or adoption. A gift
under this paragraph can not be given for consideration that
50 is more than 1/2 the assessed value of the real estate.

2 D-5. A division accomplished by a gift to a municipality if
4 that municipality accepts the gift does not create a lot or
6 lots for the purposes of this definition, unless the intent
of the transferor is to avoid the objectives of this
subchapter.

8 D-6. A division accomplished by the transfer of any
10 interest in land to the owners of land abutting that land
12 that does not create a separate lot does not create a lot or
14 lots for the purposes of this definition, unless the intent
16 of the transferor is to avoid the objectives of this
subchapter. If the real estate exempt under this paragraph
is transferred within 5 years to another person without all
of the merged land, then the previously exempt division
creates a lot or lots for the purposes of this subsection.

18 E. The division of a tract or parcel of land into 3 or more
20 lots and upon each of which lots permanent dwelling
structures legally existed before September 23, 1971 is not
22 a subdivision.

24 F. In determining the number of dwelling units in a
26 structure, the provisions of this subsection regarding the
determination of the number of lots apply, including
exemptions from the definition of a subdivision of land.

28 G. Notwithstanding the provisions of this subsection,
30 leased dwelling units are not subject to subdivision review
32 if the municipal reviewing authority has determined that the
units are otherwise subject to municipal review at least as
stringent as that required under this subchapter.

34 H-1. This subchapter may not be construed to prevent a
36 municipality from enacting an ordinance under its home rule
authority that:

38 (1) Expands the definition of "subdivision" to include
40 the division of a structure for commercial or
industrial use; or

42 (2) Otherwise regulates land use activities.

44 A municipality may not enact an ordinance that expands the
46 definition of "subdivision" except as provided in this
subchapter. A Except as provided in paragraph H-2, a
48 municipality that has a definition of "subdivision" that
conflicts with the requirements of this subsection at the
time this paragraph takes effect shall comply with this
50 subsection no later than January 1, 2006. Such a

2 municipality must file its conflicting definition at the
3 county registry of deeds by June 30, 2003 for the definition
4 to remain valid for the grace period ending January 1,
5 2006. A filing required under this paragraph must be
6 collected and indexed in a separate book in the registry of
7 deeds for the county in which the municipality is located.

8 H-2. A municipality that has adopted a comprehensive plan
9 under subchapter 2, article 2 may enforce an ordinance that
10 defines "subdivision" as the division of a tract or parcel
11 of land into 2 or more lots within a 5-year period that
12 begins on or after September 23, 1971, as long as that
13 definition was enacted prior to July 25, 1992.

14 I. The grant of a bona fide security interest in an entire
15 lot that has been exempted from the definition of
16 subdivision under paragraphs D-1 to D-6, or subsequent
17 transfer of that entire lot by the original holder of the
18 security interest or that person's successor in interest,
19 does not create a lot for the purposes of this definition,
20 unless the intent of the transferor is to avoid the
21 objectives of this subchapter.

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

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27 **SUMMARY**

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29 **30** This bill provides that a municipality that has adopted a
30 comprehensive plan may enforce an ordinance that defines
31 "subdivision" as the creation of 2 or more lots within a 5-year
32 period.