

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1242

H.P. 861

House of Representatives, March 30, 2009

An Act To Streamline the Regulatory Process for Commercial Building Construction Projects

(EMERGENCY)

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative HASKELL of Portland.

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

3 **Whereas,** construction projects require a variety of permits from a variety of
4 permitting agencies; and

5 **Whereas,** consolidating the permitting review to a single authority will expedite the
6 review process and thereby improve the regulatory environment in this State and improve
7 the efficiency of State Government; and

8 **Whereas,** currently some municipalities review commercial construction projects
9 for compliance with building, plumbing, zoning and electrical code and those
10 municipalities exercise the principle authority for issuing construction permits in this
11 State; and

12 **Whereas,** some municipalities currently enforce the Life Safety Code of the
13 National Fire Protection Association for residential construction; and

14 **Whereas,** the Office of the State Fire Marshal conducts plan reviews for compliance
15 with the Life Safety Code of the National Fire Protection Association for commercial
16 construction; and

17 **Whereas,** some municipalities are well positioned to serve as the Life Safety Code
18 of the National Fire Protection Association permitting authority for commercial
19 construction in this State; and

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

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

25 **Sec. 1. 25 MRSA §2448,** as repealed and replaced by PL 1983, c. 232, §1 and
26 amended by PL 2003, c. 689, Pt. B, §6 and PL 2007, c. 324, §17, is further amended to
27 read:

28 **§2448. Construction permit; when required**

29 No A property owner, agent or representative of the owner may not construct, alter or
30 change the use of any structure to become a public building without first obtaining from
31 the Commissioner of Public Safety or from a municipality designated pursuant to section
32 2448-A a permit ~~therefor~~ for that purpose. A request for a permit ~~shall~~ must be
33 accompanied by a true copy of the plans and specifications for that construction,
34 reconstruction or change of use. The commissioner shall issue a permit only if the plans
35 comply with statutes and lawful ~~regulations promulgated~~ rules adopted to reduce fire
36 hazards.

1 The term "public building" ~~shall include~~ includes any building or structure
2 constructed, operated or maintained for use by the general public, which ~~shall include~~
3 includes, but is not be limited to, all buildings or portions of buildings used for a
4 schoolhouse, hospital, convalescent, nursing or boarding home to be licensed by the
5 Department of Health and Human Services, Division of Licensing and Regulatory
6 Services; theater or other place of public assembly, mercantile occupancy over 3,000
7 square feet, hotel, motel or business occupancy of 2 or more stories; or any building to be
8 ~~state-owned~~ state-owned or ~~operated~~ state-operated.

9 The term "true copy" means an accurate representation by dimensioned plans and
10 specifications of the final construction documents.

11 **Sec. 2. 25 MRSA §2448-A** is enacted to read:

12 **§2448-A. Municipal review of development**

13 The Commissioner of Public Safety, referred to in this section as "the commissioner,"
14 may register municipalities for authority to issue permits required by section 2448 under
15 the following conditions. For purposes of this section, "municipal reviewing authority"
16 has the same meaning as defined in Title 30-A, section 4366, subsection 7.

17 **1. Projects.** A municipality registered pursuant to this section may review projects
18 of public buildings that occupy less than 3,000 square feet.

19 **2. Registration.** The commissioner shall register municipalities to grant permits for
20 projects under subsection 1 if the commissioner finds that the municipality meets all of
21 the following criteria.

22 A. A municipal inspector of buildings has been appointed pursuant to section 2351.

23 B. The municipality has an employee that is certified as a plan reviewer by the
24 National Fire Protection Association.

25 C. The municipality has adopted by reference the fire codes adopted by the Office of
26 the State Fire Marshal pursuant to sections 2452 and 2465..

27 D. The municipality has adequate resources to administer and enforce the provisions
28 of the fire codes under paragraph C.

29 E. The procedures for public hearing and notification have been established
30 including:

31 (1) Notice to the commissioner upon receipt of an application, including a
32 description of the project;

33 (2) Notice of issuance and denial to the applicant and commissioner, including
34 the reason for denial;

35 (3) Public notification of the application and any hearings; and

36 (4) Procedures for public hearing.

37 F. The procedures for appeal of local decisions by aggrieved parties are defined.

1 G. A registration form, provided by the commissioner, has been completed and
2 submitted by the municipality, demonstrating compliance with the criteria under this
3 subsection.

4 H. The municipality is currently enforcing the Maine Uniform Building and Energy
5 Code.

6 The Department of Public Safety shall publish on its publicly accessible website a list of
7 those municipalities that are registered pursuant to this subsection.

8 **3. Current requirements.** A municipality registered under this section shall ensure
9 that its municipal regulations continue to meet the criteria listed in subsection 2.

10 A. The commissioner shall immediately notify a registered municipality of new or
11 amended rules.

12 B. A municipality shall adopt amendments to its municipal regulations within one
13 calendar year of the effective date of new or amended rules adopted by the
14 Department of Public Safety. Within 45 days of the adoption of the amended
15 municipal regulations, the municipality shall submit the amendments for approval by
16 the commissioner.

17 **4. Suspension of registration.** If the commissioner finds that a municipality no
18 longer meets the criteria under subsection 2, or is not adequately implementing those
19 requirements, the commissioner may suspend the registration under subsection 2 and
20 shall immediately notify the municipality. The notice must contain findings of fact and
21 conclusions of law. If the registration is suspended, the commissioner shall provide the
22 municipality with the necessary procedures to come into compliance with this section.

23 **5. Central list of pending projects.** The commissioner shall maintain and make
24 available a list of projects that are pending municipal review under this section.

25 **6. Technical assistance.** The commissioner may provide technical assistance to
26 municipalities upon request for projects reviewed under this section.

27 **7. Application review process.** Upon determination by the municipal reviewing
28 authority that an application for a permit or permit amendment under this section is
29 complete for processing:

30 A. The municipal reviewing authority shall submit to the commissioner within 14
31 days of that determination one copy of the project application; and

32 B. The commissioner shall review the application and, within 30 days of its receipt
33 or within 30 days of receipt of any subsequent amendment to the application, notify
34 the municipality if the Department of Public Safety intends to exercise jurisdiction as
35 provided in subsection 9.

36 A failure of the commissioner to act within the 30-day period following receipt of the
37 application for a permit or within 30 days of receipt of any amendment to the application
38 constitutes a decision not to exercise jurisdiction as provided in subsection 9.

39 **8. Record of review and basis for decision.** The municipality shall submit to the
40 commissioner one copy of the record of the review of the application for a permit or

1 permit amendment and basis of the decision for each permit or permit amendment
2 granted pursuant to this section within 40 working days of final action by the municipal
3 reviewing authority.

4 **9. State jurisdiction.** The Department of Public Safety shall review projects and
5 exercise jurisdiction for a registered municipality if:

6 A. The municipal reviewing authority in which the project is located petitions the
7 commissioner in writing; or

8 B. The proposed project is located in more than one municipality.

9 **10. Joint enforcement.** A permit or permit amendment issued by a municipal
10 reviewing authority may be enforced by either the commissioner or the municipality that
11 issued the permit or permit amendment.

12 **Sec. 3. 25 MRSA §2450,** as amended by PL 2007, c. 699, §12, is further amended
13 to read:

14 **§2450. Examinations by Department of Public Safety**

15 The Commissioner of Public Safety shall adopt, in accordance with requirements of
16 the Maine Administrative Procedure Act, a schedule of fees for the examination of all
17 plans for construction, reconstruction or repairs submitted to the Department of Public
18 Safety. The fee schedule for new construction or new use is 5¢ per square foot for
19 occupied spaces and 2¢ per square foot for bulk storage occupancies, except that a fee for
20 review of a plan for new construction by a public school may not exceed \$450. The fee
21 schedule for reconstruction, repairs or renovations is based on the cost of the project and
22 may not exceed \$450, except as provided in section 2450-A. The Except for projects
23 reviewed by a municipality pursuant to section 2448-A, the fees must be credited to a
24 special revenue account to defray expenses in carrying out this section. Any balance of
25 the fees may not lapse, but must be carried forward as a continuing account to be
26 expended for the same purpose in the following fiscal years. For projects reviewed by a
27 municipality that include occupied spaces, a 1¢ fee per square foot must be remitted to
28 the Department of Public Safety and a 4¢ fee per square foot must be paid to the
29 municipality.

30 A municipality is prohibited from charging a developer a fee that is in excess of the
31 4¢ fee per square foot for fire code permits. This limitation does not prohibit a
32 municipality from charging fees for other construction-related permits.

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

35 **SUMMARY**

36 This bill provides for the delegation of fire code permitting authority from the
37 Department of Public Safety, Office of the State Fire Marshal to municipalities.

1 The bill amends the law concerning certain public building projects for which the
2 Department of Public Safety provides plan reviews.

3 The bill amends the laws concerning project permits to allow the option of municipal
4 review for those projects.

5 The bill creates a new section of law that outlines the circumstances that need to be
6 satisfied before the Commissioner of Public Safety may delegate permitting authority to a
7 municipality.

8 The bill also amends the law in order to adjust the payment of the current 5¢ plan
9 review fee that is paid to the Department of Public Safety. It requires that if a
10 municipality issues the permit, the municipality receives the 4¢ fee per square foot and
11 the Department of Public Safety receives the 1¢ fee per square foot of the proposed
12 project. There is no additional cost to the developer under this section.