

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1268

H.P. 887

House of Representatives, March 31, 2009

An Act To Update the Site Location of Development Laws

Reference to the Committee on Natural Resources suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative DUCHESNE of Hudson.
Cosponsored by Representative: SAVIELLO of Wilton.

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

2 **Sec. 1. 30-A MRSA §4406, sub-§1, ¶B-1**, as enacted by PL 1989, c. 769, §1, is
3 repealed.

4 **Sec. 2. 30-A MRSA §4406, sub-§1, ¶F**, as enacted by PL 1989, c. 769, §1, is
5 repealed.

6 **Sec. 3. 38 MRSA §482, sub-§4-D**, as amended by PL 1987, c. 812, §§5 and 18,
7 is repealed.

8 **Sec. 4. 38 MRSA §482, sub-§5, ¶C**, as repealed and replaced by PL 1993, c.
9 680, Pt. A, §35, is repealed.

10 **Sec. 5. 38 MRSA §482, sub-§5, ¶C-1**, as repealed and replaced by PL 1993, c.
11 680, Pt. A, §35, is repealed.

12 **Sec. 6. 38 MRSA §482, sub-§5, ¶E**, as amended by PL 1995, c. 493, §5, is
13 further amended to read:

14 E. Unless intended to circumvent this article, the following transactions may not be
15 considered lots offered for sale or lease to the general public:

16 (1) Sale or lease of ~~lots~~ a lot to an abutting owner ~~or if the lot is not further~~
17 ~~divided or transferred within a 5-year period, except as provided in this~~
18 ~~subsection, or sale or lease of a lot to a spouse, child, parent, grandparent or~~
19 ~~sibling of the developer if these lots are~~ the lot is not further divided or
20 transferred to a person not so related to the developer within a 5-year period,
21 except as provided in this subsection;

22 (2) Personal, nonprofit transactions, such as the transfer of lots by gift, if those
23 lots are not further divided or transferred within a 5-year period or the transfer of
24 lots by devise or inheritance; or

25 (3) Grant of a bona fide security interest in the whole lot or subsequent transfer
26 of the whole lot by the original holder of the bona fide security interest or that
27 person's successor in interest;

28 **Sec. 7. 38 MRSA §482, sub-§5, ¶F**, as repealed and replaced by PL 1993, c. 680,
29 Pt. A, §35, is amended to read:

30 F. In those subdivisions that would otherwise not require site location approval,
31 unless intended to circumvent this article, the following transactions may not, except
32 as provided, be considered lots offered for sale or lease to the general public:

33 (1) Sale or lease of ~~common lots~~ a lot created with a conservation easement as
34 defined in Title 33, section 476 that is recorded at the appropriate registry of
35 deeds prior to the beginning of land clearing or construction, provided that the
36 department as long as the department approves and is made a party to the
37 easement; and

1 **Sec. 8. 38 MRSA §483-B** is enacted to read:

2 **§483-B. Location of development of state or regional significance**

3 The department may not approve an application for a structure, a development
4 occupying a land or water area in excess of 20 acres or a subdivision unless the
5 development is located or designed as described in subsection 1 or 2.

6 **1. Residential subdivisions.** A subdivision in which all lots are for single-family,
7 detached, residential housing; common areas; or open space must be:

8 A. Located in a locally designated growth area, as identified in a comprehensive plan
9 adopted pursuant to and consistent with the procedures, goals and guidelines of Title
10 30-A, chapter 187, article 2 or as identified in a growth management program
11 certified under Title 30-A, section 4347-A;

12 B. In the absence of a consistent comprehensive plan, located in an area served by a
13 public sewer system that has the capacity for the development or in an area identified
14 as a census designated place in the latest Federal Decennial Census or an urban
15 compact municipality or compact area as defined in Title 23, section 754; or

16 C. Designed to meet department standards for a subdivision adopted pursuant to
17 section 484. The department may accept an application designed to meet those
18 subdivision standards and determine whether the design meets those standards as part
19 of the department's review of the application.

20 If the department approves an application for a subdivision designed to meet
21 subdivision standards under section 484 and later identifies a violation of those
22 standards, the noncompliance is considered a violation of the permit and applicable
23 standards.

24 **2. Structures, 20-acre developments and other subdivisions.** A structure, a
25 development that occupies a land or water area in excess of 20 acres or a subdivision in
26 which at least one lot is not for single-family, detached, residential housing; common
27 areas; or open space must be:

28 A. Located in a locally designated growth area, as identified in a comprehensive plan
29 adopted pursuant to and consistent with the procedures, goals and guidelines of Title
30 30-A, chapter 187, article 2 or as identified in a growth management program
31 certified under Title 30-A, section 4347-A; or

32 B. In the absence of a consistent comprehensive plan, located in an area served by a
33 public sewer system that has the capacity for the development or in an area identified
34 as a census designated place in the latest Federal Decennial Census or an urban
35 compact municipality or compact area as defined in Title 23, section 754.

36 **3. Exceptions.** This section does not apply to:

37 A. A development described by Title 30-A, section 4349-A, subsection 1, paragraph
38 C, subparagraph (1), (2), (3), (4), (5) or (7) as determined by the department. For
39 purposes of this subsection, Title 30-A, section 4349-A, subsection 1, paragraph C,

1 subparagraph (2) includes but is not limited to wind power developments and
2 transmission lines; and

3 B. Reconstruction or expansion of a development or other project in existence on
4 January 1, 2010.

5 **Sec. 9. 38 MRSA §484, sub-§1**, as amended by PL 1995, c. 287, §1, is further
6 amended to read:

7 **1. Financial capacity and technical ability.** The developer has the financial
8 capacity and technical ability to develop the project in a manner consistent with state
9 environmental standards and with the provisions of this article. The commissioner may
10 issue a permit under this article that conditions any site alterations upon a developer
11 providing the commissioner with evidence that the developer has been granted a line of
12 credit or a loan by a financial institution authorized to do business in ~~this~~ the State as
13 defined in Title 9-B, section 131, subsection 17-A or with evidence of any other form of
14 financial assurance the board determines by rule to be adequate:

15 **Sec. 10. 38 MRSA §484, sub-§5**, as repealed and replaced by PL 1987, c. 812,
16 §§10 and 18, is amended to read:

17 **5. Ground water.** The proposed development will not pose an unreasonable risk
18 that a discharge to a ~~significant ground water aquifer~~ groundwater will occur.

19 **Sec. 11. 38 MRSA §484-C** is enacted to read:

20 **§484-C. Bonds or other security**

21 **1. Bond or other security.** The department may require a bond from an applicant
22 for a development under this article payable to the State with sureties satisfactory to the
23 department or such other security as the department may determine will adequately
24 secure compliance, conditioned upon the faithful performance of the requirements of this
25 chapter, department rules and permit provisions.

26 **2. Developments requiring security.** Security may be required when the
27 department determines that if construction or operation of a development proposed under
28 this article does not proceed as anticipated, there is an unacceptable risk of unreasonable
29 impacts to the natural environment or existing uses without the security. This risk may be
30 due to factors such as the scope or complexity of required environmental controls or
31 management, the particular type of development, sensitivity of the potentially impacted
32 natural environment or existing uses, site conditions or the compliance history of the
33 applicant.

34 **3. General requirements.** The department may require:

35 A. A bond to address all or a part of the work necessary to comply with applicable
36 requirements;

37 B. All proceeds of forfeited bonds or other security to be expended by the
38 department for necessary work for which the bond or other security was posted and
39 any remainder returned to the permittee; or

1 C. Other security, including a security deposit with the State, an escrow account and
2 agreement, insurance or an irrevocable trust.

3 This section does not apply to mining activities for which a bond or other security is
4 required by the department pursuant to section 490, subsection 2.

5 **Sec. 12. 38 MRSA §485-A, sub-§1-C**, as amended by PL 2005, c. 602, §5, is
6 further amended to read:

7 **1-C. Long-term construction projects.** The department shall adopt rules allowing
8 ~~the option of, and identifying requirements for, a planning permit~~ a long-term
9 construction project that allows allow approval of development within a specified area
10 and within specified parameters such as maximum area, and groundwater usage and
11 ~~traffic generation~~, although the specific nature and extent of the development or timing of
12 construction may not be known at the time ~~the a permit for the long-term construction~~
13 project is issued. The location and parameters of the development must meet the
14 standards of this article. ~~This alternative is not available for subsection~~ does not apply to
15 metallic mineral mining or advanced exploration activities. Rules adopted pursuant to
16 this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter
17 2-A.

18 ~~If the department determines that full compliance with new or amended rules enacted~~
19 ~~after a planning permit was issued will significantly alter the plan for the development,~~
20 ~~the department may require the permittee to comply with the rules in effect at the time of~~
21 ~~issuance of the planning permit and, to the extent practicable, to comply with additional~~
22 ~~requirements or standards in the new or amended rules for any remaining portion of the~~
23 ~~development for which final submissions have not been provided. The department may~~
24 ~~not require significant alteration of constructed or permitted infrastructure authorized by~~
25 ~~the planning permit, or subsequent approvals designed to serve future development~~
26 ~~phases in existence at the time of the new or amended rules in assessing practicability.~~

27 ~~For purposes of this subsection, "practicable" means available and feasible considering~~
28 ~~cost, existing technology and logistics based on the overall purpose of the project as~~
29 ~~authorized in the planning permit.~~

30 **Sec. 13. 38 MRSA §486-B** is enacted to read:

31 **§486-B. General permit authority; Department of Transportation developments**

32 **1. Authorization.** The department may issue a general permit for all or a subclass of
33 developments constructed or caused to be constructed or operated or caused to be
34 operated by the Department of Transportation that require approval pursuant to this
35 article.

36 **2. Standards.** A development authorized by a general permit is required to meet all
37 applicable requirements under and rules adopted pursuant to this article. In a general
38 permit the department may:

39 A. Rely upon the Department of Transportation's environmental procedures and
40 standard practices for purposes of approving a development if the department

1 determines that such practices meet or exceed the requirements of and rules adopted
2 pursuant to this article. This reliance may occur although the Department of
3 Transportation's environmental procedures and standard practices have not been
4 adopted through rulemaking and minor changes to such procedures and practices
5 occur without prior review by the department;

6 B. Provide for reduced submissions or less review than would otherwise be required
7 for an individual permit; and

8 C. Set forth specific requirements, terms and conditions.

9 For purposes of any enforcement under this subsection, the department may rely upon the
10 standards of and rules adopted pursuant to this article, although the department may have
11 relied upon the Department of Transportation's environmental procedures and standard
12 practices for purposes of approval.

13 **3. Review.** The department may approve:

14 A. A specific development upon receipt and review of a notice of intent under
15 subsection 4, paragraph A to comply with standards in the general permit for the
16 specific development from the Department of Transportation; or

17 B. A notice of intent under subsection 4 prior to receipt of a final design for a
18 development, as long as any requirements in a general permit for the approval are
19 met.

20 **4. Procedure.** Procedures for a general permit under this section include:

21 A. A notice of intent must be submitted on a form provided by the department and
22 contain information required by the department that is necessary to determine
23 whether standards will be met; and

24 B. If a general permit provides for approval of a notice of intent under paragraph A
25 prior to submission of final designs to the department, then following submission of
26 the designs the department may require that changes in design be made where
27 necessary to conform with applicable standards.

28 The Department of Transportation may choose to apply for an individual permit for a
29 development rather than file a notice of intent under paragraph A.

30 The department may require the Department of Transportation to file for an individual
31 permit for a development that would otherwise be authorized to file a notice of intent
32 under paragraph A as provided for in the general permit.

33 **5. Approval.** A development authorized under a general permit is considered to be
34 approved by the department upon approval by the department of a notice of intent under
35 subsection 4, paragraph A. The permit must include the text of the general permit and the
36 department's approval of the notice of intent under subsection 4. The department may
37 condition its approval of the notice of intent as necessary to ensure compliance with
38 standards under a general permit.

39 **6. Fee.** The department may not charge a fee for processing and approval of a notice
40 of intent under subsection 4, paragraph A.

1 **7. Modification of general permit.** Notwithstanding section 341-D, the department
2 may modify a general permit through notification of the Department of Transportation.
3 The department shall modify a general permit whenever rules adopted pursuant to this
4 article are enacted or modified and may modify a general permit as otherwise necessary
5 to provide for efficient administration and conformance with department standards.

6 **8. Modification of notice of intent.** The department shall provide for application
7 and approval of modification of the notice of intent in any general permit.

8 **Sec. 14. 38 MRSA §488, sub-§5,** as amended by PL 1995, c. 704, Pt. A, §17 and
9 affected by Pt. C, §2, is repealed.

10 **Sec. 15. 38 MRSA §489-A, sub-§2,** as amended by PL 1999, c. 243, §19, is
11 further amended to read:

12 **2. Registration.** The commissioner shall register municipalities to grant permits for
13 projects under subsection ~~1-B~~ 1 if the commissioner finds that the municipality meets all
14 of the following criteria:

- 15 A. A municipal planning board or reviewing authority is established;
- 16 B. A comprehensive plan consistent with Title 30-A, chapter 187 has been adopted
17 with standards and objectives determined by the department to be at least as stringent
18 as this article;
- 19 C. Subdivision regulations have been adopted that are consistent with Title 30-A,
20 chapter 187, and determined by the commissioner to be at least as stringent as criteria
21 set forth in section 484;
- 22 D. Site plan review regulations have been adopted with criteria determined by the
23 commissioner to be at least as stringent as section 484;
- 24 E. The municipality has adequate resources to administer and enforce the provisions
25 of its ordinances;
- 26 F. Procedures for public hearing and notification have been established including:
 - 27 (1) Notice to the commissioner upon receipt of an application, including a
28 description of the project;
 - 29 (2) Notice of issuance and denial to the applicant and commissioner, including
30 the reason for denial;
 - 31 (3) Public notification of the application and any hearings; and
 - 32 (4) Satisfactory hearing procedures;
- 33 G. Procedures for appeal by aggrieved parties of local decisions are defined; and
- 34 H. A registration form, provided by the commissioner, has been completed and
35 submitted by the municipality, demonstrating compliance with the criteria under this
36 subsection.

37 **Sec. 16. Report.** The Department of Environmental Protection shall review the
38 storm water management provisions in the Maine Revised Statutes, Title 38, section 420-

1 D and the site location of development provisions of Title 38, chapter 3, subchapter 1,
2 article 6 that provide for the registration of municipalities for the authority to substitute
3 local permits for state permits and exempt developments or projects from permitting or
4 specified standards within certain municipalities or portions of municipalities. The
5 department shall also consider whether these provisions may need to be amended in light
6 of changes in the regulation of storm water discharges under Title 38, section 413. The
7 department shall report concerning its review and recommend any needed statutory
8 changes on this or related subjects to the Joint Standing Committee on Natural Resources
9 by January 15, 2010. The committee is authorized to submit a bill related to this report to
10 the Second Regular Session of the 124th Legislature at the time of submission of the
11 report.

12 SUMMARY

13 This bill changes the site location of development laws in the following ways.

14 It eliminates the definition of "significant ground water aquifer. It eliminates the
15 exceptions for a lot of 40 or more acres in the definition of "subdivision." It changes the
16 exception for a sale or lease of a lot to an abutter in the definition of "subdivision" by
17 clarifying that the lot may not be further divided or transferred within a 5-year period,
18 except as otherwise provided. It changes the exception for a common lot created with a
19 conservation easement in the definition of "subdivision." It removes the requirement that
20 the lot be a common lot and adds the requirement that the conservation easement be
21 approved by the Department of Environmental Protection.

22 It adds a provision specifying the minimal planning requirements that must be met for
23 a permit to be approved by the department.

24 It changes the groundwater standard by changing a requirement to avoid an
25 unreasonable risk of discharge to a significant ground water aquifer to a requirement to
26 avoid an unreasonable risk of discharge to groundwater.

27 It provides that the Department of Environmental Protection may require a bond or
28 such other security if the department determines that a proposed development will present
29 an unacceptable risk of unreasonable impacts to the natural environment or existing uses
30 without such security.

31 It makes several changes to a provision addressing approval of future development
32 sites to refocus it on long-term construction projects.

33 It authorizes the Department of Environmental Protection to issue a general permit
34 for all or a subclass of developments constructed or caused to be constructed or operated
35 or caused to be operated by the Department of Transportation that require approval under
36 the site location of development laws.

37 It eliminates the low-density subdivision exemption and corrects cross-references to
38 that law.

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It adds a one-time reporting requirement concerning provisions in the site location and development laws and storm water management laws that provide for the registration of municipalities for the authority to substitute local permits for state permits and exempt developments or projects from permitting or specified standards within certain municipalities or portions of municipalities. The Joint Standing Committee on Natural Resources is authorized to submit legislation relating to the report to the Second Regular Session of the 124th Legislature.