

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

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Legislative Document

No. 805

S.P. 250

In Senate, March 2, 2017

**An Act To Streamline the Municipal Review Process When Dividing
a Structure into 3 or More Dwelling Units and To Amend the
Process for Recording Subdivision Variances**

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

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator LIBBY of Androscoggin.
Cosponsored by Representative CAMPBELL of Orrington and
Senators: CARSON of Cumberland, GRATWICK of Penobscot, VOLK of Cumberland,
Representative: JORGENSEN of Portland.

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

2 **Sec. 1. 30-A MRSA §4401, sub-§4**, as amended by PL 2013, c. 126, §1, is
3 further amended to read:

4 **4. Subdivision.** "Subdivision" means the division of a tract or parcel of land into 3
5 or more lots within any 5-year period that begins on or after September 23, 1971. This
6 definition applies whether the division is accomplished by sale, lease, development,
7 buildings or otherwise. The term "subdivision" also includes the division of a new
8 structure or structures on a tract or parcel of land into 3 or more dwelling units within a 5-
9 year period, the construction or placement of 3 or more dwelling units on a single tract or
10 parcel of land and the division of an existing structure or structures previously used for
11 commercial or industrial use into 3 or more dwelling units within a 5-year period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 ~~H 1.— This subchapter may not be construed to prevent a municipality from enacting~~
32 ~~an ordinance under its home rule authority that:~~

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

35 ~~(2) Otherwise regulates land use activities.~~

36 ~~A municipality may not enact an ordinance that expands the definition of~~
37 ~~"subdivision" except as provided in this subchapter. A municipality that has a~~
38 ~~definition of "subdivision" that conflicts with the requirements of this subsection at~~
39 ~~the time this paragraph takes effect shall comply with this subsection no later than~~
40 ~~January 1, 2006. Such a municipality must file its conflicting definition at the county~~
41 ~~registry of deeds by June 30, 2003 for the definition to remain valid for the grace~~
42 ~~period ending January 1, 2006. A filing required under this paragraph must be~~

1 collected and indexed in a separate book in the registry of deeds for the county in
2 which the municipality is located.

3 H-2. This subchapter may not be construed to prevent a municipality from enacting
4 an ordinance under its home rule authority that otherwise regulates land use activities.

5 A municipality may not enact an ordinance that expands the definition of
6 "subdivision" except as provided in this subchapter. A municipality that has a
7 definition of "subdivision" that conflicts with the requirements of this subsection at
8 the time this paragraph takes effect shall comply with this subsection no later than
9 January 1, 2019. Such a municipality must file its conflicting definition at the county
10 registry of deeds by June 30, 2018 for the definition to remain valid for the grace
11 period ending January 1, 2019. A filing required under this paragraph must be
12 collected and indexed in a separate book in the registry of deeds for the county in
13 which the municipality is located.

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

19 **Sec. 2. 30-A MRSA §4402, sub-§4**, as amended by PL 1997, c. 323, §2, is
20 further amended to read:

21 **4. Airports with an approved airport layout plan.** Any airport with an airport
22 layout plan that has received final approval from the airport sponsor, the Department of
23 Transportation and the Federal Aviation Administration; ~~or~~

24 **Sec. 3. 30-A MRSA §4402, sub-§5, ¶D**, as enacted by PL 1997, c. 323, §3, is
25 amended to read:

26 D. That has been the subject of an enforcement action or order, and record of the
27 action or order was recorded in the appropriate registry of deeds; or

28 **Sec. 4. 30-A MRSA §4402, sub-§6** is enacted to read:

29 **6. Division of new or existing structures.** A division of a new or existing structure
30 into 3 or more dwelling units whether the division is accomplished by sale, lease,
31 development or otherwise in a municipality where the project is subject to municipal site
32 plan review in accordance with Title 38, section 488, subsection 19 or Title 38, section
33 489-A.

34 **Sec. 5. 30-A MRSA §4406, sub-§1, ¶B**, as enacted by PL 1989, c. 104, Pt. A,
35 §45 and Pt. C, §10 and amended by c. 362, §2 and c. 769, §1, is further amended to read:

36 B. Whenever the initial approval or any subsequent amendment of a subdivision is
37 based in part on the granting of a variance from any applicable subdivision approval
38 standard, that fact must be expressly noted on the face of the subdivision plan to be
39 recorded in the registry of deeds.

- 1 (1) In the case of an amendment, if no amended plan is to be recorded, a
2 certificate must be prepared in recordable form and recorded in the registry of
3 deeds. This certificate must:
- 4 (a) Indicate the name of the current property owner;
 - 5 (b) Identify the property by reference to the last recorded deed in its chain of
6 title; and
 - 7 (c) Indicate the fact that a variance, including any conditions on the variance,
8 has been granted and the date of the granting.
- 9 (2) The variance is not valid until recorded as provided in this paragraph.
10 ~~Recording must occur within 90 days of the final subdivision approval or~~
11 ~~approval under Title 38, chapter 3, subchapter I, article 6, where applicable,~~
12 ~~whichever date is later, or the variance is void.~~

13 **SUMMARY**

14 This bill amends the laws governing subdivisions. The bill exempts from the law
15 governing subdivisions a division of a structure into 3 or more dwelling units in a
16 municipality where the project is subject to municipal site plan review. The bill amends
17 the provision concerning when a municipal ordinance may have a definition of
18 "subdivision" that conflicts with state law. The bill removes the authority of a
19 municipality to expand the definition of "subdivision" to include the division of a
20 structure into commercial or industrial units. The bill removes the requirement that
21 variances from subdivision criteria be recorded in the registry of deeds within 90 days
22 after final approval of a subdivision plan, but retains the requirement that the variance be
23 recorded to be valid. The bill repeals provisions under which leased dwelling units are
24 not subject to subdivision review.