

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 electronic originals
(may include minor formatting differences from printed original)



131st MAINE LEGISLATURE

FIRST REGULAR SESSION-2023

Legislative Document

No. 1257

H.P. 805

House of Representatives, March 21, 2023

**An Act to Increase Housing Capacity and Protect the Municipal Tax
Base and Working Lands**

Reference to the Joint Select Committee on Housing suggested and ordered printed.


ROBERT B. HUNT
Clerk

Presented by Representative CRAFTS of Newcastle.
Cosponsored by Senator HICKMAN of Kennebec and
Representatives: ANKELES of Brunswick, DUCHARME of Madison, GEIGER of Rockland,
JAUCH of Topsham, LANDRY of Farmington, PLUECKER of Warren, POLEWARCZYK of
Wiscasset.

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

2 **Sec. 1. 30-A MRSA §4301, sub-§1-D** is enacted to read:

3 **1-D. Administrative reviewing authority.** "Administrative reviewing authority"
4 means a municipal employee or other designee of a municipality.

5 **Sec. 2. 30-A MRSA §4301, sub-§12,** as enacted by PL 1989, c. 104, Pt. A, §45
6 and Pt. C, §10, is amended to read:

7 **12. Municipal reviewing authority.** "Municipal reviewing authority" means the
8 municipal planning board, agency office, or administrative reviewing authority or, if
9 none, the municipal officers.

10 **Sec. 3. 30-A MRSA §4401, sub-§2-C** is enacted to read:

11 **2-C. Municipal site plan review.** "Municipal site plan review" means review under
12 a municipal ordinance that sets forth a process for determining whether a development
13 meets certain specified criteria, which must include criteria regarding storm water
14 management, sewage disposal, water supply and vehicular access and that may include
15 criteria regarding other environmental effects, layout, scale, appearance and safety.

16 **Sec. 4. 30-A MRSA §4401, sub-§4,** as amended by PL 2019, c. 174, §1, is further
17 amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 A municipality may not enact an ordinance that expands the definition of "subdivision"
44 except as provided in this subchapter. A municipality that has a definition of

1 "subdivision" that conflicts with the requirements of this subsection at the time this
2 paragraph takes effect shall comply with this subsection no later than January 1, 2021.
3 Such a municipality must file its conflicting definition at the county registry of deeds
4 by June 30, 2020 for the definition to remain valid for the grace period ending January
5 1, 2021. A filing required under this paragraph must be collected and indexed in a
6 separate book in the registry of deeds for the county in which the municipality is
7 located.

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

13 **Sec. 5. 30-A MRSA §4402, sub-§4**, as amended by PL 2017, c. 104, §2, is further
14 amended to read:

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

18 **Sec. 6. 30-A MRSA §4402, sub-§5, ¶D**, as amended by PL 2017, c. 104, §3, is
19 further amended to read:

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

22 **Sec. 7. 30-A MRSA §4402, sub-§6**, as amended by PL 2019, c. 174, §2, is
23 repealed.

24 **Sec. 8. 30-A MRSA §4402, sub-§7** is enacted to read:

25 **7. Structures on single lots in designated growth areas.** The construction or
26 placement of, or the division of an existing structure into, more than 3 but not more than
27 18 dwelling units on a single lot located in a designated growth area within a municipality,
28 as described in section 4349-A, subsection 1, paragraph A or B, where the project is subject
29 to municipal site plan review.

30 **Sec. 9. 30-A MRSA §4403, sub-§1**, as enacted by PL 1989, c. 104, Pt. A, §45 and
31 Pt. C, §10, is amended to read:

32 **1. Municipal reviewing authority.** The Except as provided in subsection 1-B, the
33 municipal reviewing authority shall review all requests for subdivision approval. On all
34 matters concerning subdivision review, the municipal reviewing authority shall maintain a
35 permanent record of all its meetings, proceedings and correspondence.

36 **Sec. 10. 30-A MRSA §4403, sub-§1-B** is enacted to read:

37 **1-B. Review by administrative reviewing authority.** Notwithstanding any provision
38 of this section to the contrary, the administrative reviewing authority shall review an
39 application for subdivision approval that proposes the construction or placement of, or the
40 division of an existing structure into, more than 3 but not more than 18 dwelling units on a
41 single lot in a designated growth area within a municipality, as described in section 4349-A,
42 subsection 1, paragraph A or B, and, if the municipality has adopted an ordinance providing

1 for municipal site plan review, the administrative reviewing authority shall review the
2 application in accordance with the municipal site plan review process.

3 **Sec. 11. 30-A MRSA §4404, sub-§19**, as amended by PL 2003, c. 622, §3, is
4 further amended to read:

5 **19. Impact on adjoining municipality.** For any proposed subdivision that crosses
6 municipal boundaries, the proposed subdivision will not cause unreasonable traffic
7 congestion or unsafe conditions with respect to the use of existing public ways in an
8 adjoining municipality in which part of the subdivision is located; ~~and~~

9 **Sec. 12. 30-A MRSA §4404, sub-§20**, as enacted by PL 2003, c. 622, §4 and
10 amended by PL 2011, c. 657, Pt. W, §§5, 7 and amended by PL 2013, c. 405, Pt. A, §23,
11 is amended by amending the first blocked paragraph to read:

12 For the purposes of this subsection, "liquidation harvesting" has the same meaning as in
13 Title 12, section 8868, subsection 6 and "parcel" means a contiguous area within one
14 municipality, township or plantation owned by one person or a group of persons in common
15 or joint ownership. This subsection takes effect on the effective date of rules adopted
16 pursuant to Title 12, section 8869, subsection 14-; and

17 **Sec. 13. 30-A MRSA §4404, sub-§21** is enacted to read:

18 **21. Designated rural areas.** The proposed subdivision is not located in an area
19 identified and designated in the municipality's comprehensive plan as a rural area, unless
20 the area is a designated growth area, as described in section 4349-A, subsection 1,
21 paragraph A or B, or an area for which the municipality has adopted a plan governing the
22 approval of subdivisions.

23 SUMMARY

24 This bill makes the following changes to the laws governing subdivisions.

25 1. It removes from subdivision review any projects that would result in the construction
26 or placement of, or the division of an existing structure into, 3 dwelling units on a single
27 tract or parcel of land. Current law provides that any such projects that would result in 3 or
28 more dwelling units may be subject to subdivision review.

29 2. It removes from subdivision review any projects that would result in the construction
30 or placement of, or the division of an existing structure into, more than 3 but not more than
31 18 dwelling units on a single lot located in a designated growth area within a municipality
32 where the project is subject to municipal site plan review.

33 3. It adopts a definition for "administrative reviewing authority," which means a
34 municipal employee or other designee of a municipality. It also provides that the
35 administrative reviewing authority must review any subdivision application that proposes
36 the construction or placement of, or the division of an existing structure into, more than 3
37 but not more than 18 dwelling units on a single lot in a designated growth area and, if the
38 municipality has adopted a municipal site plan review ordinance, the administrative
39 reviewing authority must review the application in accordance with the municipal site plan
40 review process.

41 4. It requires a municipal reviewing authority, when reviewing an application for
42 subdivision approval, to determine that the proposed subdivision is not located in an area

1 identified and designated in the municipality's comprehensive plan as a rural area, unless
2 the area is a designated growth area or an area for which the municipality has adopted a
3 plan governing the approval of subdivisions.