

# MAINE STATE LEGISLATURE

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NINETY - SECOND LEGISLATURE

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Legislative Document

No. 212

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H. P. 553

House of Representatives, January 31, 1945.

Referred to Committee on Legal Affairs. Sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Payson of Portland.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
FORTY-FIVE

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AN ACT Relating to Municipal Planning and Zoning.

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

**Sec. 1. R. S., c. 80, § 84, amended.** The last sentence of the first paragraph of section 84 of chapter 80 of the revised statutes is hereby amended to read as follows:

'No ~~amendment of a zoning plan~~ regulation or amendment thereof shall be adopted until after a public hearing has been held thereon nor except by a 2/3 vote, in a city of its legislative body, or in a town of a town meeting.'

**Sec. 2. R. S., c. 80, § 87, amended.** The 3rd paragraph of section 87 of chapter 80 of the revised statutes is hereby amended to read as follows:

'In a municipality having a planning board hereafter established, after the planning board has adopted a master plan as provided in this section, no regulation, official map, or zoning or other plan shall be enacted, established, or amended under the provisions of sections 84 to 86, inclusive, and no plat, street, or way shall be approved, under the such provisions of sections 84 to 86, inclusive, until the planning board shall have reported its recommendations in regard thereto, and no public building, structure, except as authorized under the provisions of sections 11 and 17 of chapter 46, utility, or roadway, or street, way, park, or other public land shall be

authorized, established, or modified in location or extent until the planning board shall have reported its recommendations in regard to the location and extent thereof. This report shall be made only after the board has made a careful investigation and is convinced that the plans or regulations recommended by it will fit in with the comprehensive master plan adopted ~~or being prepared~~ by it for the development of the municipality. ~~Before making such report the board shall hold a public hearing on its tentative proposals and recommendations.~~ In a city, if the board disapproves any enactment, establishment, amendment, approval, or authorization, such action shall not become effective except by the favorable vote of 4/5 of the legislative body. If the board fails to report within 45 days after submission to it of a proposed action, it shall be deemed to have approved such action.'

**Sec. 3. R. S., c. 80, § 88, amended.** Section 88 of chapter 80 of the revised statutes is hereby amended by repealing the last sentence thereof.

**Sec. 4. R. S., c. 80, § 88-A, additional.** Chapter 80 of the revised statutes is hereby amended by adding thereto a new section to be numbered 88-A to read as follows:

**'Sec. 88-A. Appeals.** Any person aggrieved, or taxpayer affected, by any decision of a board of appeals, or any governing body of a political subdivision which is of the opinion that a decision of a board of appeals is illegal, may present to the superior court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the decision is filed in the office of the board.

Upon presentation of such petition the court may allow a writ of certiorari directed to the board of appeals to review such decision of the board. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

The board of appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

The court shall have exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review, in whole or in part, and if need be, to

order further proceedings by the board of appeals. The findings of fact of the board, if supported by substantial evidence, shall be accepted by the court as conclusive, and no objection to a decision of the board shall be considered by the court unless such objection shall have been urged before the board, or, if it was not so urged, unless there were reasonable grounds for failure to do so.

Costs shall not be allowed against the board of appeals unless it appears to the court that it acted with gross negligence, in bad faith, or with malice, in making the decision appealed from.'