

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND THIRTEENTH LEGISLATURE

AS PUBLIC LAWS AND CONSTITUTIONAL RESOLUTIONS

at the

THIRD SPECIAL SESSION

September 15, 1988 to September 16, 1988

and the

FOURTH SPECIAL SESSION

November 28, 1988

AND

AS PRIVATE AND SPECIAL LAWS AND RESOLVES

at the

FIRST REGULAR SESSION

December 3, 1986 to June 30, 1987

FIRST SPECIAL SESSION

October 9, 1987 to October 10, 1987

SECOND SPECIAL SESSION

October 21, 1987 to November 20, 1987

SECOND REGULAR SESSION

January 6, 1988 to May 5, 1988

THIRD SPECIAL SESSION

September 15, 1988 to September 16, 1988

and the

FOURTH SPECIAL SESSION

November 28, 1988

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Twin City Printery
Lewiston, Maine
1989

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE
THIRD SPECIAL SESSION
of the
ONE HUNDRED AND THIRTEENTH LEGISLATURE
1987

PREVENTIVE HEALTH AND HEALTH SERVICE BLOCK GRANT	_____
TOTAL	\$ 0

Sec. 7. Allocation. In order to provide for the necessary expenses of operation and administration of the Bureau of Alcoholic Beverages and the State Liquor Commission, the following amount is allocated from the revenues derived from operations of the fund:

	1988-89
<u>FINANCE, DEPARTMENT OF</u>	
Alcoholic Beverages — General Oper- ations	
Personal Services	\$ 1,935
DEPARTMENT OF FINANCE	
TOTAL	\$ 1,935

Sec. 8. Legislative intent. It is the intent of the Legislature that the reclassifications and range changes represented by the appropriation and allocation amounts identified in this Part shall be considered effective upon approval of this Act.

It is also the intent of the Legislature that the appropriation and allocation of funds in this Part shall be construed as an extraordinary funding of reclassifications and range changes, shall not be construed as setting precedent and shall not be regarded as past practice in labor-management relations.

PART C

Sec. 1. 3 MRSA §225, sub-§5, as enacted by PL 1977, c. 605, §1, is repealed.

Sec. 2. 30 MRSA §1997-A, as enacted by PL 1985, c. 765, §5, is amended by adding at the end a new paragraph to read:

No department, agency or instrumentality of the State may provide any funds, grants, gifts or services to any commission which does not provide the results of any financial audit of any of its operations, including those of its subsidiary corporations, to any of its constituent municipalities.

Sec. 3. 30-A MRSA §2325, sub-§3 is enacted to read:

3. Prohibition. No department, agency or instrumentality of the State may provide any funds, grants, gifts or services to any commission which does not provide the results of any financial audit of any of its operations, including those of its subsidiary corporations, to any of its constituent municipalities.

Sec. 4. 38 MRSA §357, as enacted by PL 1987, c. 349, Pt. H, § 28, is amended to read:

§357. Procedure

Within 90 days of the completion of litigation or settlement for which compensation for legal expenses is available under section 356, a municipality may apply to the Board of Environmental Protection for reimbursement of such of those expenses as have not been awarded to it by the court and paid pursuant to Title 30, section 4966, subsection 3, paragraph D. The board shall make an award of compensation that it determines to be just under the circumstances. In order to be awarded compensation, it shall not be necessary that the municipality shall have prevailed in the litigation or the settlement, but only that its position be determined by the board to have been reasonable. Awards shall be made on a first-come first-served basis.

Sec. 5. Transfer of funds. The Governor, upon recommendation by the State Budget Officer, is authorized to transfer funds from the appropriate salary plan in order to provide funding to meet the costs of authorized market salary adjustments in accordance with the Maine Revised Statutes, Title 5, section 7065.

Sec. 6. Effective date. Section 2 of this Part is repealed on March 1, 1989 and section 3 of this Part shall take effect on March 1, 1989.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective September 23, 1988, unless otherwise indicated.

CHAPTER 885

H.P. 1981 — L.D. 2684

AN ACT to Enhance Land Use Regulation.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, a recent decision of the Maine Supreme Judicial Court has construed the state law requiring the review of subdivisions not to require reviews of condominium, motel or multi-unit rental developments; and

Whereas, this decision permits such developments to proceed in many cases without any review as to their potential harmful effects on the environment and municipal services; and

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

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

Sec. 1. 12 MRSA §682, sub-§2, as repealed and

replaced by PL 1987, c. 810, §1, is amended to read:

2. Subdivision. A subdivision is "Subdivision" means a division of an existing parcel of land into 3 or more parcels or lots within any 5-year period, whether this division is accomplished by platting of the land for immediate or future sale, or by sale of the land by metes and bounds or by leasing.

The term "subdivision" shall also include the division of a new structure or structures on a tract or parcel of land into 3 or more dwelling units within a 5-year period and the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period. The area included in the expansion of an existing structure is deemed to be a new structure for the purposes of this paragraph.

The creation of a lot or parcel more than 500 acres in size shall not be counted as a lot for the purpose of this subsection.

The creation of a lot or parcel of at least 40 but not more than 500 acres in size shall not be counted as a lot for the purpose of this subsection except when the lot or the parcel from which it was divided is located wholly or partly within the shoreland area as defined in Title 38, section 435 and except as provided in paragraph A.

A. When 3 or more lots containing at least 40 but not more than 500 acres are created within a 5-year period from a parcel which is located wholly outside the shoreland area as defined in Title 38, section 435, a plan showing the division of the original parcel must be filed by the person creating the 3rd lot with the registry of deeds, the commission and the State Tax Assessor within 60 days of the creation of that lot. Any subsequent division of a lot created from the original parcel within 10 years of the filing of the plan in the registry of deeds shall be considered a subdivision. Failure to file the plan required by this paragraph is a violation of this chapter subject to the penalties provided in section 685-C, subsection 8.

B. The commission shall submit a report by March 15th, annually, to the joint standing committee of the Legislature having jurisdiction over energy and natural resources. The report shall indicate the number and location of lots for which a plan was filed under paragraph A and the number and location of subsequent divisions requiring review by the commission.

Sec. 2. 12 MRSA §682, sub-§§11 and 12 are enacted to read:

11. Dwelling unit. "Dwelling unit" means any part of a structure which, through sale or lease, is intended for human habitation, including single-family and multi-family housing, condominiums, time-share units, and apartments.

12. Real estate. "Real estate" means land and

structures attached to it.

Sec. 3. 12 MRSA §685-B, sub-§1, ¶B, as amended by PL 1973, c. 569, §11, is further amended to read:

B. No person shall may commence development of or construction on any lot ~~or~~, parcel or dwelling unit within any subdivision or sell or offer for sale any interest in any lot ~~or~~, parcel or dwelling unit within any subdivision without a permit issued by the commission.

Sec. 4. 12 MRSA §685-B, sub-§2, ¶A, as amended by PL 1973, c. 569, §11, is further amended to read:

A. A plan of the proposed structure, subdivision or development showing the intended use of the ~~land~~ real estate, the proposed change, the details of the project and such other information as may be required by the commission to determine conformance with applicable land use standards; and

Sec. 5. 12 MRSA §685-B, sub-§6, as amended by PL 1973 c. 569, §11, is further amended to read:

6. Recording of approved proposals. A copy of each application, marked approved or disapproved, shall be retained in the commission files and shall be available to the public during normal business hours.

In the event the commission approves an application for subdivision approval, a copy of an approved plat or plan and a copy of the conditions required by the commission to be set forth in any instrument conveying an interest within the subdivision attested to by an authorized commission signature shall be filed with the appropriate registry of deeds in the county in which the ~~land~~ real estate lies.

A registrar of deeds shall not record a copy of conditions or any plat or plan purporting to subdivide ~~land~~ real estate located within the unorganized and deorganized lands of the State, unless the commission's approval is evidenced thereon.

The grantee of any conveyance of unrecorded subdivided ~~land~~ real estate or subdivided ~~land~~ real estate recorded in violation of this section may recover the purchase price, at interest, together with damages and costs in addition to any other remedy provided by law.

Sec. 6. 30 MRSA §4956, sub-§1, as amended by PL 1987, c. 810, §2, is further amended to read:

1. Defined. A subdivision is the division of a tract or parcel of land into 3 or more lots within any 5-year period, which period begins after September 22, 1971, whether accomplished by sale, lease, development, buildings or otherwise, provided that a division accomplished by devise, condemnation, order of court, gift to a person related to the donor by blood, marriage or adoption or a gift to a municipality, unless the intent of that gift is to avoid the objectives of this section, or by transfer of

any interest in land to the owner of land abutting thereon, shall not be considered to create a lot or lots for the purposes of this section.

The term "subdivision" shall also include the division of a new structure or structures on a tract or parcel of land into 3 or more dwelling units within a 5-year period and the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period. The area included in the expansion of an existing structure is deemed to be a new structure for the purposes of this paragraph.

Nothing in this section may be construed to prevent a municipality from enacting an ordinance under its home rule authority which expands the definition of subdivision to include the division of a structure for commercial or industrial use or which otherwise regulates land use activities.

In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of such tract or parcel, unless otherwise exempted herein, shall be considered to create the first 2 lots and the next dividing of either of the first 2 lots, by whomever accomplished, unless otherwise exempted herein, shall be considered to create a 3rd lot, unless both those dividings are accomplished by a subdivider who shall have retained one of the lots for his own use as a single family single-family residence or for open space land as defined in Title 36, section 1102 for a period of at least 5 years prior to that 2nd dividing.

A lot of at least 40 acres shall not be counted as a lot, except:

A. Where the lot or parcel from which it was divided is located wholly or partly within any shoreland area as defined in Title 38, section 435; or

B. When a municipality has, by ordinance, or the municipal reviewing authority has, by regulation, elected to count lots of 40 acres or more in size as lots for the purposes of this subsection where the parcel of land being divided is located wholly outside any shoreland area as defined in Title 38, section 435.

In determining the number of dwelling units in a structure, the provisions regarding the determination of the number of lots shall apply, including exemptions from the definition of a subdivision of land.

For the purposes of this section, a tract or parcel of land is defined as all contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof.

A "densely developed area" is defined as any commercial, industrial or compact residential area of 10 or more acres with an existing density of at least one principal

structure per 2 acres. A principal structure is defined as any building other than one which is used for purposes wholly incidental or accessory to the use of another building on the same premises.

A "dwelling unit" means any part of a structure which, through sale or lease, is intended for human habitation, including single-family and multifamily housing, condominiums, time-share units, and apartments. Notwithstanding the provisions of this paragraph, leased dwelling units are not subject to subdivision review if the units are otherwise subject to municipal review at least as stringent as that required under this section.

Sec. 7. 30 MRSA §4956, sub-§3, ¶N, as enacted by PL 1985, c. 794, Pt. A, §2, is amended to read:

N. The subdivider will determine, based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area the subdivider will determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan shall include a condition of plat approval requiring that principal structures ~~on lots~~ in the subdivision shall be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation.

Sec. 8. 30 MRSA §4956, sub-§4, as amended by PL 1985, c. 206, §2, is further amended to read:

4. Enforcement. No person, firm, corporation or other legal entity may sell, lease, develop, build upon or convey for consideration, offer or agree to sell, lease, develop, build upon or convey for consideration any land or dwelling unit in a subdivision which has not been approved by the municipal reviewing authority of the municipality where the subdivision is located and recorded in the proper registry of deeds, nor shall such person, firm, corporation or other legal entity sell or convey any land in ~~such~~ an approved subdivision unless at least one permanent marker is set at one lot corner of the lot sold or conveyed. The term "permanent marker" includes but is not limited to the following: A granite monument, a concrete monument, an iron pin or a drill hole in ledge. No subdivision plat or plan shall be recorded by any register of deeds which has not been approved as required. Approval for the purpose of recording shall appear in writing on the plat or plan. No public utility, water district, sanitary district or any utility company of any kind may install services to any lot or dwelling unit in a subdivision, unless written authorization attesting to the validity and currency of all local permits required under this chapter has been issued by the appropriate municipal officials. Following installation of service, the company or district shall forward the written authorization to the municipal officials indicating that installation has been completed.

Any person, firm, corporation or other legal entity who

sells, leases, develops, builds upon, or conveys for consideration, offers or agrees to sell, lease, develop, build upon or convey for consideration any land or dwelling unit in a subdivision which has not been approved as required by this section shall be penalized in accordance with section 4966. The Attorney General, the municipality or the planning board of any municipality may institute proceedings to enjoin the violations of this section.

All subdivision plats and plans required by this section shall contain the name and address of the person under whose responsibility the subdivision plat or plan was prepared.

Sec. 9. Savings clause. All otherwise valid subdivision permits or approvals for developments which would require review under this Act and which were granted prior to the effective date of this Act and any conditions or requirements of those permits or approvals remain valid and enforceable.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective September 23, 1988.

CHAPTER 886

H.P. 1990 — L.D. 2692

AN ACT Relating to Horse Racing and Racing Facilities.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, harness racing is one of Maine's most important recreational activities; and

Whereas, harness racing is vital for the continued prosperity of those agricultural societies which conduct pari-mutuel wagering; and

Whereas, the harness racing industry is in jeopardy because of increased costs of maintenance and labor and is in immediate need of relief; and

Whereas, this Act should become effective immediately to provide additional funds for the State Harness Racing Commission to operate efficiently; and

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

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

Sec. 1. 8 MRSA §268, as repealed and replaced by PL 1975, c. 309, is amended by adding at the end a new paragraph to read:

The commission may make rules allowing interstate simulcasting at a licensee's race track during any regular meeting.

Sec. 2. 8 MRSA §275, first ¶, as amended by PL 1987, c. 759, §5, is further amended to read:

Beginning January 1, 1983, each person, association or corporation licensed to conduct a race meet under this chapter shall pay to the Treasurer of State, to be credited to the General Fund of the State, a sum equal to .50% of the total contributions of regular wagers and 2.27% of the total contributions of exotic wagers to all pari-mutuel pools conducted or made at any race or race meet licensed under this chapter. If the total of the regular and exotic wagers exceeds \$37,000,000 for any calendar year, 72% of the revenue credited to the General Fund under this section attributable to this excess shall be returned by the Treasurer of State to commercial meet licensees. As used in this chapter, the term "commercial meet" means any meeting where harness racing is held with an annual total of more than 25 racing days duration with pari-mutuel wagering. This payment shall be divided in the proportion that the contributors of regular and exotic wagers of pari-mutuel pools made or conducted at the commercial meets of each licensee during the calendar year bear to the total contributions of regular and exotic wagers to pari-mutuel pools made or conducted at the commercial meets of all licensees during that calendar year. Licensees sharing in this distribution shall use 1/2 of the funds so received for the purpose of supplementing purse money. The other 1/2 of this distribution is to be used by the commercial licensees for improving ~~its~~ their racing facilities for the benefit of the public, horse owners, horsemen and horsewomen, and to increase the revenue to the State from the increase in pari-mutuel wagering resulting from such improvements. For the purpose of this section, "improvements" means the amount paid out for new buildings or for permanent improvements made to improve the facilities utilized by the licensee for conduct of its racing meetings; or the amount expended in restoring property or in improving the facility or any part of the facility which results in the addition or replacement of a fixed asset. In general, the amounts referred to as improvements include amounts paid which add to the value, improve or substantially prolong the useful life of the race track utilized by the licensee for the conduct of its racing meeting. Amounts paid or incurred for repairs and maintenance of property, interest expense or lease payments in connection with the capital improvements are not improvements within the meaning of this section. In addition, 9% of the revenue credited to the General Fund under this section attributable to this excess shall be distributed to the stipend fund provided by Title 7, section 62. Further, 9% of the revenue credited to the General Fund under this section attributable to this excess shall be paid to the commission to be credit-