

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
FIRST REGULAR SESSION

December 7, 1988 to July 1, 1989

Chapters 1 - 502

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

J.S. McCarthy Company
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PUBLIC LAWS
OF THE
STATE OF MAINE

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1989

advisory committee. The committee shall determine what constitutes excessive absence.

3. Committee meetings. The advisory committee shall be convened at the request of the chair or any 2 members of the committee.

4. Committee actions. Five members of the advisory committee shall constitute a quorum. No action may be taken by the advisory committee except by a vote of a majority of those present and voting.

5. Committee compensation. Members of the advisory committee shall serve without compensation, but shall be entitled to expenses in accordance with Title 5, chapter 379.

6. Committee scope. The advisory committee shall consult with and advise the Commissioner of Human Services and the Director of the Bureau of Medical Services on matters relating to improving home health services in the State.

7. Chair. The committee shall choose a chair from among its members.

8. Report. The committee shall submit a report of its activities by January 1st, annually, to the Governor and to the joint standing committee of the Legislature having jurisdiction over human resource matters.

9. Sunset. This section is repealed February 1, 1992.

See title page for effective date.

CHAPTER 497

H.P. 1174 - L.D. 1628

An Act to Clarify the Subdivision Laws

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

Whereas, this bill proposes a variety of changes to clarify the requirements of the subdivision laws for municipalities and these changes should be incorporated without delay; and

Whereas, this bill also proposes to change the acreage requirements for review required under the site location of development laws and to make that change retroactive; 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. 30-A MRSA §4401, sub-§3, as enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §10, is repealed and the following enacted in its place:

3. Principal structure. "Principal structure" means any building or structure in which the main use of the premises takes place.

Sec. 2. 30-A MRSA §4401, sub-§4, as enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §10, is amended to read:

4. Subdivision. "Subdivision" means the division of a tract or parcel of land into 3 or more lots within any 5-year period that begins on or after September 23, 1971. This definition applies whether the division is accomplished by sale, lease, development, buildings or otherwise. The term "subdivision" also includes 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, the construction of 3 or more dwelling units on a single tract or parcel of land 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.

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

(1) Both dividings are accomplished by a subdivider who has retained one of the lots for the subdivider's own use as a single-family residence or for open space land as defined in Title 36, section 1102, for a period of at least 5 years before the 2nd dividing occurs; or

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

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

C. A lot of 40 or more acres shall not be counted as a lot, except:

(1) When the lot or parcel from which it was divided is located entirely or partially within any shoreland area as defined in Title 38, section 435; or

(2) When a municipality has, by ordinance, or the municipal reviewing authority has, by regulation, elected to count lots of 40 or more acres as lots for the purposes of this subchapter when the parcel of land being divided is located entirely outside any shore-land area as defined in Title 38, section 435.

D. 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 subchapter, or a division accomplished by the transfer of any interest in land to the owner of abutting land abutting that land unless the intent of that transfer is to avoid the objectives of this section,~~ does not create a lot or lots for the purposes of this definition.

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

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

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

H. Nothing in this subchapter 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.

Sec. 3. 30-A MRSA §4401, sub-§7, as enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §10, is amended to read:

7. Outstanding river segments. In accordance with Title 12, section 402, "outstanding river segments" ~~include~~ means:

A. The Aroostook River from the Canadian border to the Masardis and T.10, R.6, W.E.L.S. town line, excluding the segment in T.9, R.5, W.E.L.S.;

B. The Carrabassett River from the Kennebec River to the Carrabassett Valley and Mt. Abram Township town line;

C. The Crooked River from its inlet into Sebago Lake to the Waterford and Albany Township town line;

D. The Damariscotta River from the Route 1 bridge in Damariscotta to the dam at Damariscotta Mills;

E. The Dennys River from the Route 1 bridge to the outlet of Meddybemps Lake, excluding the western shore in Edmunds Township and No. 14 Plantation;

F. The East Machias River, including the Maine River, from 1/4 of a mile above the Route 1 bridge to the East Machias and T.18, E.D., B.P.P. town line, from the T.19, E.D., B.P.P. and Wesley town line to the outlet of Crawford Lake, and from the No. 21 Plantation and Alexander town line to the outlet of Pocomoonshine Lake, excluding Hadley Lake, Lower Mud Pond and Upper Mud Pond;

G. The Fish River from the bridge at Fort Kent Mills to the Fort Kent and Wallgrass Plantation town line, from the T.16, R.6, W.E.L.S. and Eagle Lake town line to the Eagle Lake and Winterville Plantation town line, and from the T.14, R.6, W.E.L.S. and Portage Lake town line to the Portage Lake and T.13, R.7, W.E.L.S. town line, excluding Portage Lake;

H. The Kennebec River from its inlet into Cupsuptic Lake to the Rangeley and Lower Cupsuptic Township town line;

I. The Kennebec River from Thorns Head Narrows in North Bath to the Edwards Dam in Augusta, excluding Perkins Township, and from the Route 148 bridge in Madison to the Caratunk and The Forks Plantation town line, excluding the western shore in Concord Township, Pleasant Ridge Plantation and Carrying Place Township and excluding Wyman Lake;

J. The Machias River from the Route 1 bridge to the Northfield and T.19, M.D., B.P.P. town line;

K. The Mattawamkeag River from the Penobscot River to the Mattawamkeag and Kingman Township town line, and from the Reed Plantation and Bancroft town line to the East Branch in Haynesville;

L. The Narraguagus River from the ice dam above the railroad bridge in Cherryfield to the Beddington and Devereaux Township town lines, excluding Beddington Lake;

M. The Penobscot River, including the Eastern Channel, from Sandy Point in Stockton Springs to the Veazie Dam and its tributary the East Branch of the Penobscot from the Penobscot River to the East Millinocket and Grindstone Township town line;

N. The Piscataquis River from the Penobscot River to the Monson and Blanchard Plantation town line;

O. The Pleasant River from the bridge in Addison to the Columbia and T.18, M.D., B.P.P. town line,

and from the T.24, M.D., B.P.P. and Beddington town line to the outlet of Pleasant River Lake;

P. The Rapid River from the Magalloway Plantation and Upton town line to the outlet of Pond in the River;

Q. The Saco River from the Little Ossipee River to the New Hampshire border;

R. The St. Croix River from the Route 1 bridge in Calais to the Calais and Baring Plantation town line, from the Baring Plantation and Baileyville town line to the Baileyville and Fowler Township town line, and from the Lambert Lake Township and Vanceboro town line to the outlet of Spednik Lake, excluding Woodland Lake and Grand Falls Flowage;

S. The St. George River from the Route 1 bridge in Thomaston to the outlet of Lake St. George in Liberty, excluding White Oak Pond, Seven Tree Pond, Round Pond, Sennebec Pond, Trues Pond, Stevens Pond and Little Pond;

T. The St. John River from the Van Buren and Hamlin Plantation town line to the Fort Kent and St. John Plantation town line, and from the St. John Plantation and St. Francis town line to the Allagash and St. Francis town line;

U. The Sandy River from the Kennebec River to the Madrid and Township E town line;

V. The Sheepscot River from the railroad bridge in Wiscasset to the Halldale Road in Montville, excluding Long Pond and Sheepscot Pond, including its tributary the West Branch of the Sheepscot from its confluence with the Sheepscot River in Whitefield to the outlet of Branch Pond in China;

W. The West Branch of the Pleasant River from the East Branch in Brownville to the Brownville and Williamsburg Township town line; and

X. The West Branch of the Union River from the Route 181 bridge in Mariaville to the outlet of Great Pond in the Town of Great Pond.

Sec. 4. 30-A MRSA §4403, sub-§1-A is enacted to read:

1-A. Joint meetings. If any portion of a subdivision crosses municipal boundaries, the reviewing authorities from each municipality shall meet jointly to discuss the application.

Sec. 5. 30-A MRSA §4403, sub-§3, ¶A, as enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §10, is amended to read:

A. When an application is received, the municipal reviewing authority shall give a dated receipt to the applicant and shall notify by mail all abutting prop-

erty owners of the proposed subdivision, and the clerk and the reviewing authority of municipalities that abut or include any portion of the subdivision, specifying the location of the proposed subdivision and including a general description of the project.

Sec. 6. 30-A MRSA §4403, sub-§4, as enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §10, is amended to read:

4. Public hearing; notice. If the municipal reviewing authority decides to hold a public hearing on an application for subdivision approval, it shall hold the hearing within 30 days after receiving determining it has received a complete application. The municipal reviewing authority shall have notice of the date, time and place of the hearing:

A. Given to the applicant; and

B. Published, at least 2 times, in a newspaper having general circulation in the municipality in which the subdivision is proposed to be located. The date of the first publication must be at least 7 days before the hearing.

Sec. 7. 30-A MRSA §4403, sub-§5, as enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §10, is amended to read:

5. Decision; time limits. The municipal reviewing authority shall, within 30 days of a public hearing or, if no hearing is held, within 60 days of receiving determining it has received a complete application or within any other time limit that is otherwise mutually agreed to, issue an order:

A. Denying approval of the proposed subdivision;

B. Granting approval of the proposed subdivision; or

C. Granting approval upon any terms and conditions that it considers advisable to:

(1) Satisfy the criteria listed in section 4404;

(2) Satisfy any other regulations adopted by the reviewing authority; and

(3) Protect and preserve the public's health, safety and general welfare.

Sec. 8. 30-A MRSA §4404, sub-§§6, 7, 8 and 11 to 13, as enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §10, are amended to read:

6. Sewage disposal. The proposed subdivision will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized;

7. Municipal solid waste disposal. The proposed subdivision will not cause an unreasonable burden on the municipality's ability to dispose of solid waste ~~and sewage~~, if municipal services are to be ~~used~~ utilized;

8. Aesthetic, cultural and natural values. The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline;

11. Surface waters; outstanding river segments. Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of any pond, lake, river or tidal waters wetland, great pond or river as defined in Title 38, chapter 3, subchapter I, article 2-B, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.

A. When lots in a subdivision have frontage on an outstanding river segment, the proposed subdivision plan must require principal structures to have a combined lot shore frontage and setback from the normal high-water mark of 500 feet.

(1) To avoid circumventing the intent of this provision, whenever a proposed subdivision adjoins a shoreland strip narrower than 250 feet which is not lotted, the proposed subdivision shall be reviewed as if lot lines extended to the shore.

(2) The frontage and set-back provisions of this paragraph do not apply either within areas zoned as general development or its equivalent under shoreland zoning, Title 38, chapter 3, subchapter I, article 2-B, or within areas designated by ordinance as densely developed. The determination of which areas are densely developed must be based on a finding that existing development met the definitional requirements of section 4401, subsection 1, on September 23, 1983;

12. Ground water. The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water; and

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

Sec. 9. 30-A MRSA §4404, sub-§14 is enacted to read:

14. Storm water. The proposed subdivision will provide for adequate storm water management.

Sec. 10. 30-A MRSA §4406, sub-§1, ¶E is enacted to read:

E. Any person who, after receiving approval from the municipal reviewing authority and recording the plan at the registry of deeds, constructs or develops the subdivision, or transfers any lot, in a manner other than depicted on the approved plans or amendments shall be penalized in accordance with section 4552.

Sec. 11. 30-A MRSA §4407, first ¶, as enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §10, is amended to read:

Any application for subdivision approval which constitutes a revision or amendment to a subdivision plan which has been previously approved shall indicate that fact on the application and shall identify the original subdivision plan being revised or amended. In reviewing such an application, the municipal reviewing authority shall make findings of fact establishing that the proposed revisions do or do not meet the criteria of section 4404.

Sec. 12. 38 MRSA §482, sub-§5, as amended by PL 1987, c. 737, Pt. C, §§90 and 106; and c. 810, §§9 and 10; as repealed and replaced by c. 812, §7; and as amended by c. 864, §§1 and 2; and as amended by PL 1989, c. 6 and c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

5. Subdivision. A "subdivision" is the division of a parcel of land ~~of 20 or more acres~~ into 5 or more lots to be offered for sale or lease to the general public during any 5-year period if the lots to be offered, together with the roads, common areas, easement areas and all portions of the parcel of land in which rights or interests, whether express or implied, are to be so offered make up an aggregate land area of more than 20 acres except for the following:

A. All the lots are at least 10 acres in size and the aggregate land area of all the lots make up a total of 100 acres or less, unless the subdivision is located wholly or in part in the shoreland zone, in which case the exemption does not apply;

B. When:

(1) All lots are at least 5 acres in size;

(2) All lots less than 10 acres in size are of such dimensions as to accommodate within the boundaries of each a rectangle measuring 200 feet and 300 feet which abuts at one point the principal access way or the lots have at least 75 feet of frontage of a cul-de-sac which provides access;

(3) The aggregate land area of all the lots makes up a total of 100 acres or less;

(4) The subdivision is not located wholly or in part in the shoreland zone;

(5) The municipality in which the subdivision is located has adopted a subdivision ordinance, or its municipal reviewing authority has adopted subdivision regulations, pursuant to Title 30, section 4956;

C. Lots of 40 or more acres but not more than 500 acres shall not be counted as lots except where:

(1) The proposed subdivision is located wholly or partly within the shoreland area as defined in Title 38, section 435;

C-1. Lots of more than 500 acres in size shall not be counted as lots;

D. Five years after a subdivider establishes a single-family residence for that subdivider's own use on a lot and actually uses the lot for that purpose during that period, that lot shall not be counted as a lot;

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

(1) Sale or lease of lots to an abutting owner or to a spouse, child, parent, grandparent or sibling of the developer; or

(2) Personal, nonprofit transactions, such as the transfer of lots by gift or devise; and

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

(1) Sale or lease of common lots created with a conservation easement as defined in Title 33, section 476, provided that the Department of Environmental Protection is made a party.

The exception described in paragraph F does not apply, and the subdivision requires site location approval whenever the use of a lot described in paragraph F changes or the lot is offered for sale or lease to the general public without the limitations set forth in paragraph F. For the purposes of this subsection only, a 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 parcel of land unless that road was established by the owner of land on both sides of the road subsequent to January 1, 1970.

Sec. 13. 38 MRSA §489-A, first ¶, as enacted by PL 1989, c. 207, §2, is amended to read:

The Department of Environmental Protection may register municipalities ~~to grant for authority to substitute permits issued pursuant to Title 30-A, chapter 187, subchapter IV, for permits required by section 483 under the following conditions.~~

Sec. 14. 38 MRSA §489-A, sub-§8, ¶C, as enacted by PL 1989, c. 207, §2, is amended to read:

C. If the department does not act within the 45-day period, this inaction constitutes ~~its waiver of state jurisdiction~~ approval by the department and the municipal permits shall be effective as issued as the municipal permit and board permit.

Sec. 15. Application. Section 13 shall be applied retroactively to April 21, 1988.

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

Effective June 29, 1989.

CHAPTER 498

H.P. 1012 - L.D. 1410

An Act to Increase the Authority of the Department of Human Services to Assess the Medical and Active Treatment Needs of Individuals Applying for Admission to Nursing Homes

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

22 MRSA §3174-I is enacted to read:

§3174-I. Medicaid eligibility determinations for applicants to nursing homes

1. Needs assessment. The Department of Human Services may assess the medical needs of each applicant to a nursing home who is reasonably expected to become financially eligible for Medicaid benefits within 180 days of admission to the nursing home.

A. The assessment shall be completed prior to admission or, if necessary for reasons of the person's health or safety, as soon after admission as possible.

B. The department shall determine whether the services provided by the facility are medically necessary and appropriate for the applicant and, if not, what other services, such as home and community-based services, would more appropriately address the applicant's medical needs.

C. The department shall inform both the applicant and the administrator of the nursing home of the department's determination of the services needed by the applicant.