

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

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

August 21, 1989 to August 22, 1989

and

SECOND REGULAR SESSION

January 3, 1990 to April 14, 1990

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
July 14, 1990

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

J.S. McCarthy Company
Augusta, Maine
1990

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION

of the
ONE HUNDRED AND FOURTEENTH LEGISLATURE

January 3, 1990 to April 14, 1990

home park from providing notice or establishing use restrictions in addition to those required under this section.

See title page for effective date.

CHAPTER 769

H.P. 1543 - L.D. 2128

An Act to Replace the Large Lot Exceptions under the Site Location of Development Law with a Low-density Exemption

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

Sec. 1. 30-A MRSA §4406, sub-§1, as enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §10 and as amended by PL 1989, c. 362, §2 and c. 497, §10, is further amended to read:

1. Sales or other conveyances. No person may sell, lease, develop, build upon or convey for consideration, or offer or agree to sell, lease, develop, build upon or convey for consideration any land or dwelling unit in a subdivision ~~which~~ that has not been approved by the municipal reviewing authority of the municipality where the subdivision is located and approved under Title 38, chapter 3, subchapter I, article 6, where applicable, and subsequently recorded in the proper registry of deeds.

A. No register of deeds may record any subdivision plat or plan ~~which~~ that has not been approved under this subchapter. Approval for the purpose of recording must appear in writing on the plat or plan. All subdivision plats and plans required by this subchapter must contain the name and address of the person under whose responsibility the subdivision plat or plan was prepared.

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

(1) In the case of an amendment, if no amended plan is to be recorded, a certificate ~~shall~~ must be prepared in recordable form and recorded in the registry of deeds. This certificate ~~shall~~ must:

- (a) Indicate the name of the current property owner;
- (b) Identify the property by reference to the last recorded deed in its chain of title; and
- (c) Indicate the fact that a variance, including any conditions on the vari-

ance, has been granted and the date of the granting.

(2) The variance is not valid until recorded as provided in this paragraph. Recording must occur within 90 days of the final subdivision approval or approval under Title 38, chapter 3, subchapter I, article 6, where applicable, whichever date is later, or the variance is void.

B-1. Whenever the subdivision is exempt from Title 38, chapter 3, subchapter I, article 6, because of the operation of Title 38, section 488, subsection 5, that fact must be expressly noted on the face of the subdivision plan to be recorded in the registry of deeds. The developable land, as defined in Title 38, section 488, subsection 5, must be indicated on the plan. The person submitting the plan for recording shall prepare a sworn certificate in recordable form and record it in the registry of deeds. This certificate must:

(1) Indicate the name of the current property owner;

(2) Identify the property by reference to the last recorded deed in its chain of title and by reference to the subdivision plan;

(3) Indicate that an exemption from Title 38, chapter 3, subchapter I, article 6, has been exercised;

(4) Indicate that the requirements of Title 38, section 488, subsection 5, have been and will be satisfied; and

(5) Indicate the date of notification of the Department of Environmental Protection under Title 38, section 488, subsection 5.

The exemption is not valid until recorded as provided in this paragraph. Recording must occur within 90 days of the final subdivision approval under this subchapter or the exemption is void.

C. ~~No~~ A building inspector may not issue any permit for a building or use within a land subdivision unless the subdivision has been approved under this subchapter and under Title 38, chapter 3, subchapter I, article 6, where applicable.

D. Any person 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~~ that has not been approved under this subchapter and under Title 38, chapter 3, subchapter I, article 6, where applicable, shall be penalized in accordance with section ~~4452~~ 4452.

E. Any person who, after receiving approval from the municipal reviewing authority or approval under Title 38, chapter 3, subchapter I, article 6, 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 or in violation of any condition imposed by the municipal reviewing authority or the Department of Environmental Protection, where applicable, shall be penalized in accordance with section ~~4552~~ 4452.

F. Any person who sells, leases or conveys for consideration any land or dwelling unit in a subdivision approved under this subchapter and exempt from Title 38, chapter 3, subchapter I, article 6, because of the operation of Title 38, section 488, subsection 5, shall include in the instrument of sale, lease or conveyance a covenant to the transferee that all of the requirements of Title 38, section 488, subsection 5, have been and will be satisfied.

Sec. 2. 38 MRSA §482, sub-§5, 1A, as repealed and replaced by PL 1987, c. 812, §§7 and 18, is repealed.

Sec. 3. 38 MRSA §482, sub-§5, 1B, as repealed and replaced by PL 1987, c. 812, §§7 and 18 and as amended by PL 1987, c. 737, Pt. C, §§90 and 106; PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is repealed.

Sec. 4. 38 MRSA §482, sub-§5, 1C, as repealed and replaced by PL 1987, c. 812, §§7 and 18, is amended to read:

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~~ zone;

Sec. 5. 38 MRSA §488, sub-§4, as enacted by PL 1987, c. 812, §§14 and 18, is repealed.

Sec. 6. 38 MRSA §488, sub-§§5, 6 and 7 are enacted to read:

5. Subdivision exemptions. The following developments are exempt from this article:

A. A development that consists only of a subdivision located entirely within the area of the State subject to the jurisdiction of the Maine Land Use Regulation Commission under Title 12, chapter 206-A; and

B. A development that consists only of a subdivision if:

(1) The average density of the subdivision is not higher than one lot for every 5 acres of developable land in the parcel;

(2) The developable land in the parcel totals 200 acres or less and at least 50% of the developable land in the parcel is preserved in perpetuity through conservation easements pursuant to Title 33, chapter 7, subchapter VIII-A, in units no smaller than 10 acres in size and of such dimensions as to accommodate within each unit boundary a rectangle measuring 250 feet by 500 feet;

(3) The conservation easements preserve the land in an essentially undeveloped natural state including the preservation of farmland having a history of agricultural use and the preservation of forest land for harvesting by uneven-aged selection methods designed to retain the natural character of the area, except that other methods of harvesting are permissible following a natural disaster;

(4) The conservation easements grant a 3rd-party right of enforcement, as defined in Title 33, section 476, to the department. The conservation easements granting a 3rd-party right of enforcement must be submitted to and accepted by the commissioner;

(5) All significant wildlife habitat that is mapped or that qualifies for mapping under section 480-B, subsection 10 is included in the preserved land area under subparagraph (3);

(6) No clearing, grading, filling or other development activity occurs on sustained slopes in excess of 30%;

(7) If the developable land in the parcel not subject to the requirements of subparagraphs (3) and (5) is located wholly or in part in the watershed of any lake or pond classified GPA under section 465-A, long-term measures to control phosphorus transport are taken in accordance with a phosphorus control plan that is consistent with standards for phosphorus control adopted by the board;

(8) Soil erosion and sedimentation during development of the subdivision is controlled in accordance with a plan approved by the municipality in which the subdivision is located or by the soil and water conservation district for the county in which the subdivision is located;

(9) The nonpreserved, developable land in the parcel is not located wholly or partly within the shoreland zone of a lake or pond classified GPA under section 465-A; and

(10) At the time all necessary conservation easements are filed with the department and at least 30 days prior to the commencement of clearing and construction activity, the

person creating the subdivision notifies the commissioner in writing on a form supplied by the commissioner that the exemption afforded by this paragraph is being used. The person creating the subdivision shall file with that form a set of site plans, including the plans required under subparagraphs (7) and (8), and other evidence sufficient to demonstrate that the requirements of this paragraph have been met. The commissioner shall forward a copy of the form to the municipality in which the subdivision is located.

For purposes of this paragraph, "developable land in the parcel" means all contiguous land in the same ownership except for coastal wetlands, freshwater wetlands, rivers, streams and brooks as defined in section 480-B and except for any surface water classified GPA under section 465-A.

6. Multi-unit housing exemption. Developments that consist only of multi-unit housing located entirely within the area of the State subject to the jurisdiction of the Maine Land Use Regulation Commission under Title 12, chapter 206-A, are exempt from the requirements of this article.

7. Exemption for expansion at existing manufacturing facility. New construction that is not a development that may substantially affect the environment at an existing manufacturing facility is exempt from review under this article provided that the additional disturbed area not to be revegetated does not exceed 30,000 square feet in any calendar year. When review under this article is required for development at an existing manufacturing facility, the applicant shall provide plans for the new development, as well as for those activities which have been undertaken pursuant to this subsection.

See title page for effective date.

CHAPTER 770

H.P. 1441 - L.D. 2010

An Act Concerning the Depuration Digging of Shellfish

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

Sec. 1. 12 MRSA §6856, sub-§3, as amended by PL 1979, c. 249, is further amended to read:

3. Depuration certificate. The commissioner may issue a depuration certificate to a wholesale seafood license holder ~~which that~~ authorizes the holder to take shellfish from closed areas for depuration ~~and to process or transport them, processing and transportation.~~ The certificate ~~shall~~ **must** establish the limits on harvesting, depurating and processing methods and any other provisions required to assure the public safety. The commis-

sioner may permit depuration of shellfish not contaminated by paralytic shellfish poisoning if it is established that the water used during depuration will not contaminate the shellfish with paralytic shellfish poisoning. To ensure consistency with municipal shellfish conservation programs, established pursuant to section 6671, the commissioner must consult with a municipal shellfish conservation committee before taking action to open an area within that municipality for depuration digging. The commissioner may continue to issue controlled purification certificates for areas that were restricted to depuration digging on September 1, 1989, without consulting municipalities.

Sec. 2. Department of Marine Resources study. The Department of Marine Resources shall establish a group of interested municipal representatives to identify and recommend methods to increase participation by municipalities, interested citizens and municipal shellfish conservation committees in water quality testing, especially as the water quality testing relates to shellfish sanitation sampling and depuration harvesting programs. Municipal representatives must include members of municipal shellfish conservation committees. The department shall also identify and implement methods to increase cooperation and communication between the department and municipalities on shellfish-related issues. The department shall report its findings, any actions taken and any recommendations, including any implementing legislation, by January 15, 1991, to the Executive Director of the Legislative Council for transmittal to the Joint Standing Committee on Marine Resources. The Joint Standing Committee on Marine Resources may introduce legislation to the First Regular Session of the 115th Legislature in response to the department's report.

See title page for effective date.

CHAPTER 771

H.P. 1405 - L.D. 1953

An Act to Strengthen Penalties for Operating under the Influence When a Minor Is a Passenger

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

Sec. 1. 29 MRSA §1311-A, sub-§5, ¶B, as amended by PL 1989, c. 502, Pt. B, §34, is further amended to read:

B. ~~The~~ Except as provided in paragraph B-1, the period of license suspension for a person whom the Secretary of State has determined to have operated or attempted to operate a motor vehicle with an excessive blood-alcohol level for a first or subsequent offense ~~shall be~~ is the same suspension period as if the person were convicted or adjudicated of a violation of section 1312-B or Title 15, section 3103, subsection 1, paragraph F.