LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST SPECIAL SESSION

November 28, 1995 to December 1, 1995

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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
Augusta, Maine
1995

(2) The vendor or contractor retains all intellectual property rights in those trade secrets; and

(3) The state agency agrees to hold and use the programs, data, diagrams or source code without disclosing any identified trade secrets.

5. Public records. Except as provided in subsection 4, any document created or stored on a State Government computer is a public record and must be made available in accordance with Title 1, chapter 13 unless specifically exempted by that chapter.

Sec. 2. Application. This Act applies to employees of the executive, the judicial or the legislative branch on or after the effective date of this Act.

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

Effective April 11, 1996.

CHAPTER 704

H.P. 1352 - L.D. 1853

An Act to Reorganize and Redirect Aspects of the Site Location of Development Laws

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

PART A

Sec. A-1. 38 MRSA §352, Table I, as amended by PL 1995, c. 493, §1, is further amended to read:

TABLE I

MAXIMUM FEES IN DOLLARS

TITLE 36 SECTION	PROCESSING FEE	CERTIFICATION FEE
656, sub-§1, ¶E, Pollution Control Facilities		
A. Water pollution control facilities with capacities at least 4,000 gallons of waste per day and §1760, sub-§29, water pollution control facilities	$250	$20
B. Air pollution control and §1760, sub-§30, air pollution control facilities	250	20

TITLE 38 SECTION	PROCESSING FEE	LICENSE FEE
344, sub-§7, Permit by rule	$50	$0
362-A. Experiments	175	175
413, Waste discharge licenses		
A. Residential (10-year term)	450	150
B. Commercial (10-year term)		
1. Flow of less than 2,000 gallons per day	4,800	1,280
2. Flow of 2,000 to 20,000 gallons per day inclusive	4,800	4,000
3. Flow of greater than 20,000 gallons per day	4,800	9,600
C. Industrial minor (based upon EPA list of major and minor source discharges)		
1. Discharges of cooling water, sanitary wastewater or treated storm water only	1,500	480
2. All others	1,500	6,000
D. Industrial major (based upon EPA list of major source discharges)		
1. Discharge of cooling water or sanitary wastewater only	4,800	3,000
2. All others	4,800	8,800
E. Publicly owned treatment works		
1. Flow of less than or equal to 50,000 gallons per day and no significant industrial component	100	400
2. Flow of greater than 50,000 gallons per day, but less than 0.5 million gallons per day and no significant industrial component	100	1,400
3. Flow of at least 0.5 million gallons per day, but less than 5 million	100	3,600

gallons per day and no significant industrial component		
4. Flow of at least 5 million gallons per day or a significant industrial component	300	5,400
F. Special discharges		
1. Aquatic pesticides	130	75
2. Dredge spoils	130	75
418, Log storage	55	25
451, Mixing zones	1,200	2,200
451-A, Time schedule variances	25	25
480-E, Natural resources protection		
A. Any alteration of a protected natural resource, except coastal wetlands and coastal sand dunes, causing less than 20,000 square feet of alteration of the resource	140	50
B. Any alteration of a coastal wetland causing less than 20,000 square feet of alteration of the resource	240	60
C. Any alteration of a protected natural resource, except coastal sand dunes, causing 20,000 square feet or more of alteration of the resource	.015/sq. ft. alteration	005/sq. ft. alteration
D. Any alteration of a coastal sand dune	3,500	1,500
E. Condition compliance	84	0
F. Minor modification	184	0
485-A, Site location of development		
A. Residential subdivisions		
1. Affordable housing	50/lot	50/lot
2. On public water and sewers	175/lot	175/lot
3. All Other	250/lot	250/lot
B. Industrial parks	460/lot	460/lot
C. Mining	1,500	1,000
D. Structures	4,000	2,000
D-1.Traffic		
Scoping meeting with no further review	500	0
Scoping meeting with further review	500	1,500
"Scoping meeting" refers to the process described in section 484, subsection 2, paragraph B		
E. Other	1,000	1,000
543, Oily waste discharge	40	160
560, Vessels at anchorage	125	100
587, Ambient air quality	5,050	50
or emissions standards variances		
590, Air emissions licenses	See section 353-A	
633, Hydropower projects		
A. New or expanded generating capacity	450/MW	50/MW
B. Maintenance and repair or other structural alterations not involving an increase in generating capacity	150	50
1101, Sanitary districts	150	50
33 United States Code, Chapter 26, Water Quality Certifications, in conjunction with applications for hydropower project licensing or relicensing		
A. Initial consultation	1,000	0
B. Second consultation	1,000	0
C. Application		
1. Storage	1,000	0
2. Generating	300/MW	50/MW
1304, Waste management		
A. Septage disposal		
1. Site designation	50	25
B. Land application of sludges and residuals program approval		
1. Industrial sludge	400	400
2. Municipal sludge	300	275
3. Bioash	300	275
4. Wood ash	300	75
5. Food waste	300	75
6. Other residuals	300	175
C. Landfill		
1. Closing plans for nonmunicipal landfills	1,500	1,500
2. Closing plans for municipal landfills	500	500
3. Variance requests for attenuation land-fills	175	175
4. Preliminary information reports	175	175
5. License transfers	500	175
6. Special waste disposal		
a. One-time disposal of quantities of 6 cubic yards or less	50	50
b. One-time disposal of quantities greater than 6 cubic yards	100	100
c. Program approval for	300	300

routine disposal of a special waste		
D. Incineration facility		
1. Fuel substitution activities	1,575	1,500
2. License transfer	175	175
E. License transfer other than for landfills and incinerators	100	100

Sec. A-2. 38 MRSA §481, 5th ¶ is enacted to read:

The Legislature further finds that the development, maintenance and preservation of safe, efficient and environmentally sound transportation systems are vital to the protection of the economic, physical and social well-being of the citizens of the State; that preservation and enhancement of the service capabilities of the existing transportation infrastructure are important public functions in furtherance of these goals; that the location of developments can have significant environmental, operational, safety and fiscal impacts upon the transportation infrastructure; that the expertise to evaluate and regulate transportation impacts primarily resides within the Department of Transportation; and that the transfer of responsibilities for the evaluation and regulation of the impacts of the location of development upon the transportation infrastructure from the Department of Environmental Protection to the Department of Transportation may benefit the citizens of the State by creating a more efficient and simpler regulatory system, provided that this system offers an applicant under section 485-A the option of a consolidated permit process in which an application requires approval from both agencies.

Sec. A-3. 38 MRSA §482, sub-§2, as repealed and replaced by PL 1993, c. 680, Pt. C, §7, is amended to read:

2. Development of state or regional significance that may substantially affect the environment. "Development of state or regional significance that may substantially affect the environment," in this article also called "development," means any federal, state, municipal, quasi-municipal, educational, charitable, residential, commercial or industrial development that:

A. Occupies a land or water area in excess of 20 acres;

B. Contemplates drilling for or excavating natural resources on land or under water where the area affected is in excess of 60,000 square feet;

C. Is a mining or advanced exploration activity as defined in this section;

D. Is a structure as defined in this section; ~~or~~

E. Is a subdivision as defined in this section~~.~~; or

I. Generates 100 or more passenger car equivalents at peak hour.

"Development" does not include borrow pits regulated under article 7.

Sec. A-4. 38 MRSA §482, sub-§3-C is enacted to read:

3-C. Passenger car equivalents at peak hour. "Passenger car equivalents at peak hour" means the number of passenger cars, or, in the case of nonpassenger vehicles, the number of passenger cars that would be displaced by nonpassenger vehicles, that pass through an intersection or on a roadway under prevailing roadway and traffic conditions at that hour of the day during which the traffic volume generated by the development is higher than the volume during any other hour of the day. For purposes of this article, one tractor-trailer combination is the equivalent of 2 passenger cars.

Sec. A-5. 38 MRSA §482, sub-§5, as amended by PL 1995, c. 493, §5, is further amended by repealing and replacing the first paragraph to read:

5. Subdivision. A "subdivision" is the division of a parcel of land into 5 or more lots, other than lots for single-family, detached, residential housing, common areas or open space, to be offered for sale or lease to the general public during any 5-year period, if the aggregate land area includes more than 20 acres; or the division of a parcel of land into 15 or more lots for single-family, detached, residential housing, common areas or open space, to be offered for sale or lease to the general public within any 5-year period, if the aggregate land area includes more than 30 acres. The aggregate land area includes 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 offered. This definition of "subdivision" is subject to the following exceptions:

Sec. A-6. 38 MRSA §482, sub-§7, as enacted by PL 1991, c. 160, §1, is repealed.

Sec. A-7. 38 MRSA §483-A, as amended by PL 1993, c. 383, §20 and affected by §42, is further amended to read:

§483-A. Prohibition

~~No~~ A person may not construct or cause to be constructed or operate or cause to be operated or, in the case of a subdivision, sell or lease, offer for sale or lease or cause to be sold or leased~~,~~ any development of state or regional significance that may substantially affect the environment without first having obtained

approval for this construction, operation, lease or sale from the department. A person having an interest in, or undertaking an activity on, a parcel of land affected by an order or permit issued by the department may not act contrary to that order or permit.

Sec. A-8. 38 MRSA §484, first ¶, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §89, is further amended to read:

The department shall approve a development proposal whenever it finds ~~that:~~ the following.

Sec. A-9. 38 MRSA §484, sub-§2, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §90, is further amended to read:

2. Traffic movement. ~~The~~ For any development that generates 100 or more passenger car equivalents at peak hour, the developer has made adequate provision for traffic movement of all types into~~,~~ and out of ~~or within~~ the development area. ~~The department shall consider traffic movement both on-site and off-site.~~ Before issuing a permit, the department shall determine that any traffic increase attributable to the proposed development will not result in unreasonable congestion or unsafe conditions on a road in the vicinity of the proposed development. The Department of Transportation shall provide the department with an analysis of traffic movement of all types into~~,~~ and out of ~~or within~~ the development area and with a statement of recommended findings on traffic issues. In making its determination under this subsection, the department shall consider the analysis and recommendations provided by the Department of Transportation~~;~~. Traffic movement determinations are subject to the following.

A. A proposed development that involves fewer than 100 passenger car equivalents at peak hour is not subject to traffic review.

B. Notwithstanding any other provision of this article, the review of any proposed development that requires approval under this article solely because it is a development that generates 100 or more passenger car equivalents at peak hour is limited only to issues relevant to the traffic movement standard in this section. The additional provisions in this paragraph apply only to section 485-A permits for a proposed development that generates 100 to 200 passenger car equivalents at peak hour and is subject to the limited scope of review provided in this subsection.

If an application is subject to review by the department, the department, together with the Department of Transportation and the appropriate representative of the municipality or municipalities where the project is located, shall discuss with the applicant the scope of impact evaluation required for the proposed development and the type of proceedings warranted. The applicant shall provide notice to abutting municipalities. The Department of Transportation shall make the final determination on the appropriate scope of evaluation and information required. If the Department of Transportation determines as a result of these communications that the applicant has demonstrated that the proposed development satisfies minimum performance standards adopted for developments that generate 100 to 200 passenger car equivalents at peak hour and the Department of Transportation determines that there are no other significant traffic-related issues presented, the department may issue a permit to the applicant without further proceedings.

C. If a development is located in an area designated as a growth area in a local growth management plan that has been found by the State to be consistent with the growth management program in Title 30-A, chapter 187, the department shall require improvements to the level of traffic service only if the level of service adjacent to or in the vicinity of the development is or would be level of service E or F, as determined by the Department of Transportation in accordance with the "Highway Capacity Manual" (3rd ed. 1994). In these cases, improvements are limited only to those necessary to mitigate for the foreseeable impacts of the development.

Sec. A-10. 38 MRSA §484, sub-§4, as repealed and replaced by PL 1987, c. 812, §§10 and 18, is amended to read:

4. Soil types. The proposed development will be built on soil types ~~which~~ that are suitable to the nature of the undertaking ~~and will not cause unreasonable erosion of soil or sediment nor inhibit the natural transfer of soil~~.

Sec. A-11. 38 MRSA §484, sub-§4-A is enacted to read:

4-A. Storm water management and erosion and sedimentation control. The proposed development meets the standards for storm water management in section 420-D and the standard for erosion and sedimentation control in section 420-C. For purposes of review of metallic mineral mining or advanced exploration, these standards apply in all areas of the State. If a permit is issued pursuant to this article, a permit is not required pursuant to section 420-D. If exempt from section 420-D, a proposed development must satisfy the applicable storm water quantity standard and, if the development is located in the direct watershed of a lake included in the list adopted

pursuant to section 420-D, subsection 3, any applicable storm water quality rules adopted pursuant to section 420-D.

Sec. A-12. 38 MRSA §485-A, sub-§§1-B and 1-C is enacted to read:

1-B. Advance ruling. Any person intending to construct or operate a development may, before filing a complete application for the development, seek an advance ruling from the department as to whether the development meets requirements for approval under provisions relating to traffic. A request for an advance ruling must be filed with the commissioner, together with other information as the department may require. The department shall issue an advance ruling no later than 45 days after the submission of all information required by the department. An advance ruling issued under this subsection is valid for 2 years and is binding upon the department at the time that it acts upon the application for the development unless there is a material change in the development that affects the subject matter of the advance ruling, or unless the commissioner or the board determines that there is substantial new information on the subject matter that requires reconsideration of the advance ruling.

1-C. Approval of future development sites. The department shall adopt rules allowing the option of, and identifying requirements for, a planning permit that allows approval of development within a specified area and within specified parameters such as maximum area, groundwater usage and traffic generation, although the specific nature and extent of the development or timing of construction may not be known at the time the permit is issued. The location and parameters of the development must meet the standards of this article. This alternative is not available for metallic mineral mining or advanced exploration activities. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

Sec. A-13. 38 MRSA §487-A, sub-§2, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §96, is further amended to read:

2. Power generating facilities. In case of a permanently installed power generating facility of more than 1,000 kilowatts or a transmission line carrying ~~100~~ 120 kilovolts, or more, proposed to be erected within this State by an electric utility or utilities, the proposed development, in addition to meeting the requirements of section 484, must also have been approved by the Public Utilities Commission under Title 35-A, section 3132.

In the event that an electric utility or utilities file a notification pursuant to section 485-A before they are issued a certificate of public convenience and necessity by the Public Utilities Commission, they shall file a bond or, in lieu of that bond, satisfactory evidence of financial capacity to make that reimbursement with the department, payable to the department, in a sum satisfactory to the commissioner and in an amount not to exceed $50,000. This bond or evidence of financial capacity must be conditioned to require the applicant to reimburse the department for its cost incurred in processing any application in the event that the applicant does not receive a certificate of public convenience and necessity.

Sec. A-14. 38 MRSA §487-A, sub-§3, as enacted by PL 1987, c. 812, §§13 and 18, is amended to read:

3. Easement required; transmission line or gas pipeline. In the case of a gas pipeline or a transmission line carrying ~~100~~ 120 kilovolts or more, a permit under this chapter may be obtained prior to any acquisition of lands or easements to be acquired by purchase. The permit ~~shall~~ must be obtained prior to any acquisition of land by eminent domain.

Sec. A-15. 38 MRSA §488, first ¶, as amended by PL 1993, c. 383, §26 and affected by §42, is further amended to read:

This ~~Article~~ article does not apply to any development in existence or in possession of applicable state or local licenses to operate or under construction on January 1, 1970, or to any development the construction and operation of which has been specifically authorized by the Legislature prior to May 9, 1970, or to public service corporation transmission lines, except transmission lines carrying ~~100~~ 120 kilovolts or more, nor does it apply to the renewal or revision of leases of parcels of land upon which a structure or structures have been located as of March 15, 1972, nor to the rebuilding or reconstruction of natural gas pipelines or transmission lines within the same right-of-way.

Sec. A-16. 38 MRSA §488, sub-§3, as amended by PL 1993, c. 383, §26 and affected by §42, is repealed.

Sec. A-17. 38 MRSA §488, sub-§5, as amended by PL 1993, c. 383, §26 and affected by §42, is further amended to read:

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

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~~ 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~~ common areas no smaller than 10 acres in size and of dimensions that accommodate within each ~~unit~~ common area 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 are 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~~;~~.

~~C. A development consisting only of a residential subdivision of fewer than 30 lots if:~~

~~(1) The lots are served by a municipal sewer system;~~

~~(2) The parcel is located within a municipality having a comprehensive plan and land use ordinances that the Department of Economic and Community Development has determined are consistent with Title 30-A, sections 4312 to 4349; and~~

~~(3) All lots are restricted to residential or open space use, except that 10 years after a residence is established on a lot, that lot may be converted to a nonresidential use by a lot buyer if allowed under municipal ordinances; and~~

~~D. Effective November 1, 1993, a development consisting only of a residential subdivision of 15 or fewer lots if:~~

~~(1) The parcel is located within a municipality having a comprehensive plan and land use ordinances that the Department of Economic and Community Development has determined are consistent with Title 30-A, sections 4312 to 4349;~~

~~(2) The department has determined that the municipal land use ordinances referred to in subparagraph (1) provide standards for groundwater protection that are at least as stringent as groundwater protection standards contained in rules adopted under this article and the municipality has provided evidence of technical capability as specified in the rule; and~~

~~(3) All lots are restricted to residential or open space use, except that 10 years after a residence is established on a lot, that lot may be converted to a nonresidential use by a lot buyer if allowed under municipal ordinances.~~

~~A lot in a residential subdivision exempted pursuant to paragraph C or D is no longer counted toward the 30 lot threshold in paragraph C or the 15 lot threshold in paragraph D for purposes of determining jurisdiction more than 5 years after the time a municipal subdivision plan showing the lot is recorded or the lot is sold or leased, whichever occurs first. A residential subdivision is a division of a parcel in which all lots are used for single family housing or open space.~~

Sec. A-18. 38 MRSA §488, sub-§8, as amended by PL 1993, c. 383, §26 and affected by §42, is repealed.

Sec. A-19. 38 MRSA §488, sub-§14, as amended by PL 1995, c. 462, Pt. A, §75, is further amended to read:

14. Developments within designated growth areas. The following provisions apply to developments within a designated growth area.

A. A development is exempt from review under traffic movement, flood plain, noise and infrastructure standards under section 484 if that development is located entirely within:

(1) A municipality that has adopted a local growth management program that the ~~Department of Economic and Community Development~~ State Planning Office has certified under Title 30-A, section 4348; and

(2) An area designated in that municipality's local growth management program as a growth area.

An applicant claiming an exemption under this paragraph shall include with the application a statement from the ~~Department of Economic and Community Development~~ State Planning Office affirming that the location of the proposed development meets the provisions of subparagraphs (1) and (2).

An applicant claiming an exemption under this paragraph shall publish a notice of that application in a newspaper of general circulation in the region that includes the municipality in which the development is proposed to occur. That notice must include a statement indicating the standard or standards for which the applicant is claiming an exemption.

B. The commissioner may require application of the traffic movement, noise, flood plain or infrastructure standards to a proposed development if the commissioner determines, after receipt of a petition under subparagraph (1) or on the commissioner's own initiative under subparagraph (2), that a reasonable likelihood exists that the development will have a significant and unreasonable impact on traffic movement, flood plains, infrastructure or noise beyond the boundaries of the municipality within which the development is to be located.

(1) Within 15 working days after the publication of the notice required under paragraph A, municipal officers or residents of the municipality in which the development is proposed to occur or municipal officers or residents of an abutting municipality may petition the commissioner to apply one or more of the standards for which an exemption is claimed under this subsection. A petition must be signed either by the municipal officers of the petitioning municipality or by 10% of that number of registered voters of the petitioning municipality casting ballots in the most recent gubernatorial election or 150 registered voters of the petitioning municipality, whichever is less. The petition must include the name and legal address of each signatory and must designate one signatory as the contact person. The commissioner shall notify the contact person and the applicant of the commissioner's decision within 10 working days after receipt of a petition meeting the requirements of this subsection. A decision by the commissioner under this subparagraph is appealable to the board.

(2) A decision to require the application of one or more standards made on the commissioner's own initiative must be made within 15 working days after the application is filed with the department.

Nothing in this subsection may be construed to exempt a proposed development from review for flooding potential due to increases in ~~stormwater~~ storm water runoff caused by the development.

Sec. A-20. 38 MRSA §488, sub-§§19 and 20 are enacted to read:

19. Municipal capacity. A structure, as defined in section 482, subsection 6, that is from 3 acres up to and including 7 acres or a subdivision, as defined in section 482, subsection 5, that is made up of 15 or more lots for single-family, detached, residential housing, common areas or open space with an aggregate area of from 30 acres up to and including 100 acres is exempt from review under this article if located wholly within a municipality or municipalities having delegated review pursuant to section 489-A or meeting the criteria in paragraphs A to C as determined by the department. The planning board of the municipality in which the development is located or an adjacent municipality may petition the commissioner to review such a structure or subdivision if it has regional environmental impacts. This petition must be filed within 20 days of the receipt of the application by the municipality. State jurisdiction must be exerted, if at all, within 30 days of receipt of the completed project application by the commissioner from the municipality or within 30 days of receipt of any modification to that application from the municipality. Review by the department is limited to the identified regional environmental impacts. The criteria are as follows:

A. A municipal planning board or reviewing authority is established and the municipality has adequate resources to administer and enforce the provisions of its ordinances. In determining whether this criterion is met, the commissioner may consider any specific and adequate technical assistance that is provided by a regional council;

B. The municipality has adopted a site plan review ordinance. In determining the adequacy of the ordinance, the commissioner may consider model site plan review ordinances commonly used by municipalities in this State that address the issues reviewed under applicable provisions of this article prior to July 1, 1997; and

C. The municipality has adopted subdivision regulations. In determining the adequacy of these regulations, the commissioner may consider model subdivision regulations commonly used by municipalities in this State.

The department, in consultation with the State Planning Office, shall publish a list of those municipalities determined to have capacity pursuant to this subsection. This list need not be established by rule and must be published by January 1, 1997. If the department fails to publish the list by January 1, 1997, municipalities with a site plan or subdivision ordinances or regulations are deemed to have capacity for corresponding projects until January 1, 1998, or until the list is published, whichever period is longer. The list must specify whether a municipality has capacity to review structures or subdivisions of lots for single-family, detached, residential housing, common areas or open space or both types of development. The department may recognize joint arrangements among municipalities and regional organizations in determining whether the requirements of this subsection are met. On and after January 1, 2003, the department shall irrebuttably presume and publish that each municipality with a population of 2,500 or more, as measured by the United States Census of the year 2000, has capacity as provided in this subsection.

20. Modifications in permitted subdivisions. Review is not required under this article in the following instances:

A. When the owner of a single lot in a subdivision with a permit under this article conveys a right of access to adjacent land that was not part of the permitted subdivision, if the right-of-way is not contrary to the terms of the subdivision permit and the right-of-way is not more than 50 feet long;

B. When 2 lot owners in a subdivision with a permit under this article convey reciprocal easements for the purpose of constructing a common driveway in place of 2 separate driveways, if the single driveway reduces the total amount of impervious area in the affected subwatershed; or

C. When a lot owner in a permitted subdivision seeks to relocate the proposed septic field that had been designated by the permit holder, if the septic field is no closer to the down-gradient property boundary and the relocation is approved by the required local and state agencies, such as the plumbing inspector and the Department of Human Services, Division of Health Engineering.

Sec. A-21. 38 MRSA §489-A, sub-§1, as amended by PL 1993, c. 383, §27 and affected by §42, is further amended to read:

1. Kinds of projects. The following kinds of projects may be reviewed by registered municipalities pursuant to this section:

A. Subdivisions as described in section 482, subsection 5 of more than 20 acres but less than 100 acres;

~~D. Structures as described in section 482, subsection 6, paragraph B in excess of 3 acres but less than 7 acres; or~~

F. Excavation on more than 5 acres of land for borrow, topsoil, clay or silt, whether alone or in combination as described in section 482, subsection 2-B~~.~~; or

G. A project generating 100 to 200 passenger car equivalents at peak hour.

Sec. A-22. 38 MRSA §489-D is enacted to read:

§489-D. Technical assistance to municipalities

A state department or agency shall provide technical assistance to a municipality in the form of a peer review of development studies when the state capacity and resources exist.

1. Costs. A state department or agency may charge a municipality for this assistance under this section. A municipality may recover these costs from the developer.

2. Type of development. The following provisions apply to assistance under this section.

A. Assistance is available for the review of site location issues arising from a proposal for a subdivision of at least 5 lots and 20 acres and for a proposal for a development that has at least 3 acres of buildings, parking lots, roads, paved areas, wharves or areas to be stripped or graded and not revegetated and not subject to review by the department under this article.

B. A municipality may also obtain technical assistance in the form of a peer review from a private consultant or regional council and may recover costs from the developer for a project of any size. The State Planning Office has the authority to establish rules as necessary for this purpose.

Sec. A-23. Transition provisions.

1. A permit issued pursuant to the Maine Revised Statutes, Title 38, chapter 3, subchapter I, article 6 prior to the effective date of this Act remains in effect, as written, until rescinded pursuant to Title 38, section 489-C or modified by the Department of Environmental Protection.

2. A project that requires a permit issued pursuant to the Maine Revised Statutes, Title 38, chapter 3, subchapter I, article 6 prior to the effective date of this Act for a subdivision or a structure that would not require a permit if proposed after the effective date of this Act must continue to meet the standards of the site location of development laws in Title 38, chapter 3, subchapter I, article 6 when applying for a modification except that additional facilities, lots, roads or any portions of the project that are proposed to be located in new areas that were not identified as protected or part of the development during the licensing process, as determined by the Department of Environmental Protection, do not require review unless the additional portions would themselves require review after the effective date of this Act.

3. A municipality with delegated authority pursuant to the Maine Revised Statutes, Title 38, section 489-A prior to the effective date of this Act continues to have delegated authority following the effective date of this Act and is presumed to have capacity pursuant to Title 38, section 489-D as of the effective date of this Act.

Sec. A-24. Report; permit-granting authority. The Department of Transportation, in consultation with the Department of Environmental Protection and others as appropriate, shall determine the alternatives for a transfer of responsibilities regarding permit-granting authority relating to traffic, and report to the First Regular Session of the 119th Legislature no later than February 1, 1999. The report of the Department of Transportation must include any necessary implementing legislation that will provide for the transfer of permit-granting authority to the Department of Transportation no later than June 30, 1999.

Unless a transfer of the permit-granting authority to the Department of Transportation occurs earlier, and notwithstanding any other provision of law, beginning June 30, 1999, the Department of Transportation has permit-granting authority relating to traffic. In the event of a transfer, a proposed development subject to review under the Maine Revised Statutes, Title 38, chapter 3, subchapter I, article 6, solely because it meets the traffic threshold provisions of Title 38, section 482, subsection 2, is subject only to the jurisdiction of the Department of Transportation. Projects subject to review under Title 38, chapter 3, subchapter I, article 6 on grounds including, but not limited to, the traffic threshold are subject to the joint jurisdiction of the Department of Environmental Protection and the Department of Transportation and this joint jurisdiction must be exercised through a consolidated proceeding.

Sec. A-25. Development of recommendations. The Land and Water Resources Council, established in the Maine Revised Statutes, Title 5, section 3331, shall form a committee consisting of representatives of the Department of Environmental Protection, the Office of the State Fire Marshal, the Board of Pesticides Control, the Maine Emergency

Management Agency, affected industries and municipal and other public interests to discuss and study the requirements of a uniform system for the registration, storage and handling of petroleum products, hazardous materials and other substances with the potential to contaminate groundwater. The committee need not consider spill prevention, control and countermeasures plans and related procedures for activities regulated under Title 38, chapter 3, subchapter I, articles 7 and 8. The committee shall develop recommendations regarding required legislative or regulatory action and submit them to the Land and Water Resources Council no later than January 10, 1998. The Land and Water Resources Council may submit legislation based on these recommendations to the First Regular Session of the 118th Legislature no later than January 20, 1998.

The Department of Environmental Protection shall develop, in concert with the Department of Conservation, the Department of Human Services and other affected state agencies, water utilities, water bottlers and other interested parties, a program to minimize the potential for unreasonable adverse impact on the availability of groundwater to support existing uses. This program may have both regulatory and nonregulatory components and must assess the availability of groundwater in different regions of this State to support future development without unreasonable adverse impacts on existing uses or the natural environment. The Department of Environmental Protection shall present recommendations for any statutory requirements to the Land and Water Resources Council no later than January 10, 1998. The Land and Water Resources Council may submit legislation based on these recommendations to the First Regular Session of the 118th Legislature no later than January 20, 1998.

Sec. A-26. Memorandum of agreement. The Department of Environmental Protection and the Department of Human Services shall identify changes to the subsurface wastewater disposal rules and other relevant rules and statutes needed to address the potential for adverse impacts on groundwater quality from engineered disposal fields and the Department of Human Services shall adopt any such changes to its rules. The Department of Environmental Protection and the Department of Human Services shall enter into a memorandum of agreement no later than 30 days after the effective date of this Act under which the Department of Environmental Protection shall provide review of potential water quality impacts from large disposal systems.

PART B

Sec. B-1. 30-A MRSA §4452, sub-§7, as corrected by RR 1993, c. 1, §77, is amended to read:

7. Natural resources protection laws. A code enforcement officer, authorized by a municipality to represent that municipality in District Court and certified by the ~~Commissioner of Human Services~~ State Planning Office under section 4221 as familiar with court procedures, may enforce the provisions of the natural resources protection laws, Title 38, chapter 3, subchapter I, article 5-A and Title 38, section 420-C, by instituting injunctive proceedings or by seeking civil penalties in accordance with Title 38, section 349, subsection 2.

Sec. B-2. 38 MRSA §§420-C and 420-D are enacted to read:

§420-C. Erosion and sedimentation control

A person who conducts, or causes to be conducted, an activity that involves filling, displacing or exposing soil or other earthen materials shall take measures to prevent unreasonable erosion of soil or sediment beyond the project site or into a protected natural resource as defined in section 480-B. Erosion control measures must be in place before the activity begins. Measures must remain in place and functional until the site is permanently stabilized. Adequate and timely temporary and permanent stabilization measures must be taken.

This section applies to a project or any portion of a project located within an organized area of this State. This section does not apply to agricultural fields. Forest management activities, including associated road construction or maintenance, conducted in accordance with applicable standards of the Maine Land Use Regulation Commission, are deemed to comply with this section. This section may not be construed to limit a municipality's authority under home rule to adopt ordinances containing stricter standards than those contained in this section.

§420-D. Storm water management

A person may not construct, or cause to be constructed, a project that includes 20,000 square feet or more of impervious area or 5 acres or more of disturbed area in the direct watershed of a body of water most at risk from new development or one acre or more of impervious area or 5 acres or more of disturbed area in any other area without prior approval from the department. A person proposing a project shall apply to the department for a permit using an application provided by the department. This section applies to a project or any portion of a project that is located within an organized area of this State.

1. Standards. The department shall adopt rules specifying quantity and quality standards for storm water. Storm water quality standards for projects with 3 acres or less of impervious surface may address phosphorus, nitrates and suspended solids but may not

directly address other dissolved or hazardous materials unless infiltration is proposed. Storm water quality standards apply only in the direct watersheds of waterbodies most at risk from development and in sensitive or threatened geographic regions or watersheds defined by the department under subsection 4. Until such regions are defined, storm water quality standards are not required to be met by a permit applicant.

2. Review. If the applicant is able to meet the standards for storm water using solely vegetative means, the department shall review the application within 30 calendar days. If structural means are used to meet those standards, the department shall review the application within 60 calendar days. The review period begins upon receipt of a complete application and may be extended pursuant to section 344-B. The department may request additional information necessary to determine whether the standards of this section are met. The application is deemed approved if the department does not notify the applicant within the applicable review period.

The department may allow a municipality or a quasi-municipal organization, such as a watershed management district, to substitute a management system for storm water approved by the department for the permit requirement applicable to projects in a designated area of the municipality.

3. Watersheds of bodies of water most at risk. The department shall establish by rule a list of watersheds of bodies of water most at risk from new development. In regard to lakes, the list must include, but is not limited to, public water supply lakes and lakes identified by the department as in violation of class GPA water quality standards or as particularly sensitive to eutrophication based on current water quality, potential for internal recycling of phosphorus, potential as a cold water fishery, volume and flushing rate or projected growth rate in a watershed. The department shall review and update the list as necessary. A municipality within the watershed of a body of water most at risk may petition the department to have the body of water added to or dropped from the list.

4. Sensitive or threatened regions or watersheds. The department shall establish by rule a list of sensitive or threatened regions or watersheds. These areas include the watersheds of surface waters that:

A. Are susceptible to degradation of water quality or fisheries because of the cumulative effect of reasonably foreseeable levels of development activity within the watershed of the affected surface waters; and

B. Are not classified as "watersheds of bodies most at risk" under subsection 3.

5. Relationship to other laws. A permit pursuant to this section is not required for a project requiring review by the department pursuant to any of the following provisions but the project may be required to meet standards for management of storm water adopted pursuant to this section: article 5-A, protection of natural resources; article 6, site location of development; article 7, performance standards for excavations for borrow, clay, topsoil or silt; article 8-A, performance standards for quarries; and sections 631 to 636, permits for hydropower projects.

6. Urbanizing areas. The department shall work with the State Planning Office to identify urban bodies of water most at risk and incorporate model ordinances protective of these bodies of water into assistance provided to local governments.

7. Exemptions. The following exemptions apply.

A. Forest management activities, including associated road construction or maintenance, do not require review pursuant to this section if any road construction is used primarily for forest management activities and is not used primarily to access development.

B. Disturbing areas for the purpose of normal farming activities, such as clearing of vegetation, plowing, seeding, cultivating, minor drainage and harvesting, does not require review pursuant to this section.

C. If the commissioner determines that a municipality's ordinance meets or exceeds the provisions of this section and that the municipality has the resources to enforce that ordinance, the commissioner shall exempt any project within that municipality. The department shall maintain a list of municipalities meeting these criteria and update this list at least every 2 years. If a municipality on the list no longer meets these criteria, it must be removed from the list. A project constructed after a municipality is removed from the list must obtain approval pursuant to this section.

D. Construction projects at industrial facilities for which a federal storm water permit application has been made or construction projects at facilities for which storm water is regulated under an existing federal discharge permit do not require review pursuant to this section.

E. Impervious and disturbed areas associated with construction or expansion of a single-family, detached residence on a parcel do not require review pursuant to this section.

F. Waste facilities regulated by the department under section 1310-N, 1319-R or 1319-X do not require review under this section. This exemption applies to new facilities, modifications of facilities, transfers of facilities and relicensing of facilities.

G. Projects involving roads, railroads and associated facilities conducted by or under the supervision of the Department of Transportation or the Maine Turnpike Authority, do not require review under this section as long as the projects are constructed pursuant to storm water quality and quantity standards set forth in a memorandum of agreement between the department and the conducting or supervising agency and the project does not require review under article 6. A memorandum of agreement described in this paragraph must be updated whenever the rules concerning storm water management adopted by the department are finalized or updated.

8. Enforcement. Any activity that takes place contrary to the provisions of a valid permit issued under this article or without a permit having been issued for that activity is a violation of this article. Each day of a violation is a separate offense. A finding that any such violation has occurred is prima facie evidence that the activity was performed or caused to be performed by the owner of the property where the violation occurred. Prior to July 1, 1998, the department may not seek to impose civil or criminal penalties for a violation of this section against any person who has made a good faith effort to comply.

9. Rules. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

10. Fees. An applicant for a permit under this section shall pay a fee to the department as follows.

A. When a permit is required because of the size of the proposed impervious area, the following fees apply.

(1) If structural means of erosion control are used, the fee is $500 for from 20,000 square feet up to one acre of impervious area, plus $250 for each additional whole acre of impervious area.

(2) If solely vegetative means of erosion control are used, the fee is $250 for from 20,000 square feet up to one acre of impervious area, plus $125 for each additional whole acre of impervious area.

B. When a permit is required because of the size of the proposed disturbed area, the following fees apply.

(1) If structural means of erosion control are used, the fee is $500 for 5 acres, plus $250 for each additional whole acre of impervious area.

(2) If solely vegetative means of erosion control are used, the fee is $250 for 5 acres, plus $250 for each additional whole acre of impervious area.

C. When a permit by rule is required as provided by rules adopted by the department, the fee is $35.

If a project described in paragraph A or B is reviewed and approved by a professional engineer at a soil and water conservation district office that has a memorandum of understanding with the department concerning review of projects pursuant to this section, the fee is reduced to $100 for from 20,000 square feet up to one acre of impervious area or 5 acres of disturbed area, plus $50 for each additional whole acre.

This section may not be construed to limit a municipality's authority under home rule to adopt ordinances containing stricter standards than those contained in this section.

Sec. B-3. Memorandum of agreement. The Department of Environmental Protection shall conclude a memorandum of agreement with the Department of Transportation by July 1, 1997 specifying the storm water quality and quantity standards to be applied to projects exempt pursuant to the Maine Revised Statutes, Title 38, section 420-D, subsection 7, paragraph G.

Sec. B-4. Transition provisions applicable to the Maine Revised Statutes, Title 38, section 420-D. Impervious areas and disturbed areas created prior to the effective date of the Maine Revised Statutes, Title 38, section 420-D are not counted when determining the amount of impervious area or disturbed area on a parcel. If review is required for impervious areas or disturbed areas created on or after the effective date of Title 38, section 420-D, areas created prior to the effective date of Title 38, section 420-D are not reviewed except to the extent necessary to ensure that controls intended to address the new areas function adequately.

New construction on an impervious area created prior to the effective date of Title 38, section 420-D is not counted when determining the amount of impervious area on a parcel.

PART C

Sec. C-1. Rule-making authority. The Department of Environmental Protection has authority to adopt rules in accordance with the Maine Revised Statutes, Title 5, chapter 375 to implement Title 38, section 420-D; section 484, subsection 2, paragraph B; and section 485-A, subsection 1-C, as enacted by this Act and in accordance with the terms of those sections. Such rules must be provisionally adopted and submitted to the Legislature for review as major substantive rules pursuant to Title 5, chapter 375, subchapter II-A no later than January 1, 1997.

Sec. C-2. Effective date. This Act takes effect July 1, 1997, except section 1 of this Part takes effect 90 days after adjournment of the Second Regular Session of the 117th Legislature.

Sec. C-3. Retroactivity. That section of this Act that repeals the Maine Revised Statutes, Title 38, section 488, subsection 3 applies retroactively to July 3, 1980.

Effective July 1, 1997, unless otherwise indicated.

CHAPTER 705

S.P. 700 - L.D. 1790

An Act to Implement Performance Budgeting in State Government

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

Whereas, Public Law 1995, chapter 395 created the Commission on Performance Budgeting; and

Whereas, the Legislature proposes to require each state agency to develop a performance budget for one program by the 1998-1999 biennium and for all programs by the 2000-2001 biennium; and

Whereas, the Legislature proposes to require state agencies to develop strategic plans by August 1, 1996; and

Whereas, state agencies need advance notice and lead time to conduct their planning processes in order to meet the schedule proposed by the Legislature; 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. 5 MRSA §1710-K, as enacted by PL 1995, c. 395, Pt. B, §1, is repealed and the following enacted in its place:

§1710-K. Commission on Performance Budgeting established; definitions

1. Definitions. As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Commission" means the Commission on Performance Budgeting.

B. "Measurable objective" means a specific quantifiable outcome that defines how an agency will achieve its goals and that defines the actual impact on the public being served rather than the level of effort expended by the agency. The use of a measurable objective is a tool to assess the effectiveness of an agency's performance and the public benefit derived.

C. "Performance budgeting" means the method for developing and finalizing an agency's request for appropriations or allocations derived from its strategic plan and consistent with an agency's statutory responsibilities. Performance budgeting allocates resources based on the achievement of measurable objectives, which in turn are related to the agency's mission and goals.

D. "Policy area" means a broad functional category into which executive departments, state agencies, organizations, corporations, associations or programs and subprograms are grouped according to the degree to which they share the same or similar goals; encompass activities that share a common purpose; have common or similar customers; have common or similar measurable objectives; and may be analyzed by similar methods as defined by the State Budget Officer and the Legislative Council or the council's designee.

E. "Program" means a grouping of activities and expected results that are directed toward the accomplishment of a set of goals and objectives and represent a department, bureau, division or operational entity to which the Legislature appropriates or allocates resources as defined by the State Budget Officer and the Legislative Council or the council's designee.