



132nd MAINE LEGISLATURE

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Legislative Document

No. 128

S.P. 57

In Senate, January 8, 2025

**An Act to Support Permitting of Certain Multifamily Housing
Developments Under the Site Location of Development Laws**

Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.
Reference to the Committee on Housing and Economic Development suggested and
ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator PIERCE of Cumberland.

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

2 **Sec. 1. 38 MRSA §482, sub-§5**, as amended by PL 1997, c. 603, §2, is further
3 amended to read:

4 **5. Subdivision.** A "~~subdivision~~" is "Subdivision" means the division of a parcel of
5 land into 5 or more lots to be offered for sale or lease to the general public during any 5-
6 year period, if the aggregate land area includes more than 20 acres; except that when all
7 lots are for ~~single-family~~, detached, residential housing designed to accommodate up to 4
8 families, common areas or open space a, "~~subdivision~~" is means the division of a parcel of
9 land into 15 or more lots to be offered for sale or lease to the general public within any 5-
10 year period, if the aggregate land area includes more than 30 acres. Detached residential
11 housing may include accessory dwelling units in accordance with Title 30-A, section
12 4364-B. The aggregate land area includes lots to be offered together with the roads,
13 common areas, easement areas and all portions of the parcel of land in which rights or
14 interests, whether express or implied, are to be offered. This definition of "subdivision" is
15 subject to the following exceptions:

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

18 (1) The proposed subdivision is located wholly or partly within the shoreland zone;

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

20 D. Five years after a subdivider establishes a single-family residence for that
21 subdivider's own use on a parcel and actually uses all or part of the parcel for that
22 purpose during that period, a lot containing that residence may not be counted as a lot;

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

25 (1) Sale or lease of lots to an abutting owner or to a spouse, child, parent,
26 grandparent or sibling of the developer if those lots are not further divided or
27 transferred to a person not so related to the developer within a 5-year period, except
28 as provided in this subsection;

29 (2) Personal, nonprofit transactions, such as the transfer of lots by gift, if those lots
30 are not further divided or transferred within a 5-year period, or the transfer of lots
31 by devise or inheritance; or

32 (3) Grant of a bona fide security interest in the whole lot or subsequent transfer of
33 the whole lot by the original holder of the bona fide security interest or that person's
34 successor in interest;

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

38 (1) Sale or lease of common lots created with a conservation easement as defined
39 in Title 33, section 476, ~~provided that~~ subsection 1, unless the department is made
40 a party; and

41 H. The transfer of contiguous land by a permit holder to the owner of a lot within a
42 permitted subdivision is exempt from review under this article, ~~provided that~~ as long

1 as the land was not owned by the permit holder at the time the department approved
2 the subdivision. Further division of the transferred land must be reviewed under this
3 article.

4 The exception described in paragraph F does not apply, and the subdivision requires site
5 location approval, whenever the use of a lot described in paragraph F changes or the lot is
6 offered for sale or lease to the general public without the limitations set forth in paragraph
7 F. For the purposes of this subsection only, a "~~parcel of land is defined as~~" means all
8 contiguous land in the same ownership ~~provided~~ except that lands located on opposite sides
9 of a public or private road are considered each a separate parcel of land unless that road
10 was established by the owner of land on both sides of the road subsequent to January 1,
11 1970. A lot to be offered for sale or lease to the general public is counted, for purposes of
12 determining jurisdiction, from the time a municipal subdivision plan showing that lot is
13 recorded or the lot is sold or leased, whichever occurs first, until 5 years after that recording,
14 sale or lease.

15 **Sec. 2. 38 MRSA §488, sub-§17**, as amended by PL 1997, c. 393, Pt. A, §45, is
16 further amended to read:

17 **17. Structure area within residential lots.** Buildings, roads, paved areas or areas to
18 be stripped or graded and not revegetated that are located within lots used solely for ~~single-~~
19 ~~family detached~~ residential housing designed to accommodate up to 4 families are not
20 counted toward the 3-acre threshold described in section 482, subsection 6, paragraph B
21 for purposes of determining jurisdiction. Detached residential housing may include
22 accessory dwelling units in accordance with Title 30-A, section 4364-B. A road associated
23 only with such lots is also not counted toward the 3-acre threshold. ~~For purposes of this~~
24 ~~subsection, "single-family residential housing" does not include multi-unit housing such as~~
25 ~~condominiums and apartment buildings.~~

26 **Sec. 3. 38 MRSA §488, sub-§17-A** is enacted to read:

27 **17-A. Land or water area within residential lots.** Land or water areas that are
28 located within lots used solely for detached residential housing designed to accommodate
29 up to 4 families are not counted toward the 20-acre threshold described in section 482,
30 subsection 2, paragraph A for purposes of determining jurisdiction. Detached residential
31 housing may include accessory dwelling units in accordance with Title 30-A, section
32 4364-B. A road associated only with such lots is also not counted toward the 20-acre
33 threshold.

34 **Sec. 4. 38 MRSA §488, sub-§19**, as amended by PL 2021, c. 51, §1, is further
35 amended to read:

36 **19. Municipal capacity.** A structure, as defined in section 482, subsection 6, that is
37 from 3 acres up to and including 10 acres or a subdivision, as defined in section 482,
38 subsection 5, that is made up of 15 or more lots for ~~single-family,~~ detached, residential
39 housing designed to accommodate up to 4 families, common areas or open space with an
40 aggregate area of from 30 acres up to and including 100 acres is exempt from review under
41 this article if it is located wholly within a municipality or municipalities meeting the criteria
42 in paragraphs A to D as determined by the department and it is located wholly within a
43 designated growth area as identified in a comprehensive plan adopted pursuant to Title
44 30-A, chapter 187, subchapter 2. Detached residential housing may include accessory
45 dwelling units in accordance with Title 30-A, section 4364-B. The planning board of the

1 municipality in which the development is located or an adjacent municipality may petition
2 the commissioner to review such a structure or subdivision if it has regional environmental
3 impacts. This petition must be filed within 20 days of the receipt of the application by the
4 municipality. State jurisdiction must be exerted, if at all, within 30 days of receipt of the
5 completed project application by the commissioner from the municipality or within 30 days
6 of receipt of any modification to that application from the municipality. Review by the
7 department is limited to the identified regional environmental impacts. The criteria are as
8 follows:

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

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

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

21 D. The former State Planning Office or the Department of Agriculture, Conservation
22 and Forestry has determined that the municipality has a comprehensive land use plan
23 and land use ordinances or zoning ordinances that are consistent with Title 30-A,
24 chapter 187 in providing for the protection of wildlife habitat, fisheries, unusual natural
25 areas and archaeological and historic sites.

26 The department, in consultation with the Department of Agriculture, Conservation and
27 Forestry, shall publish a list of those municipalities determined to have capacity pursuant
28 to this subsection. This list need not be established by rule and must be published by
29 January 1st of each year. The list must specify whether a municipality has capacity to
30 review structures or subdivisions of lots for ~~single-family~~, detached, residential housing
31 designed to accommodate up to 4 families, common areas or open space or both types of
32 development. Detached residential housing may include accessory dwelling units in
33 accordance with Title 30-A, section 4364-B. The department may recognize joint
34 arrangements among municipalities and regional organizations in determining whether the
35 requirements of this subsection are met. The department may review municipalities that
36 are determined to have capacity pursuant to this subsection for compliance with the criteria
37 in paragraphs A to D, and if the department determines that a municipality does not meet
38 the criteria, the department may modify or remove the determination of capacity.

39 A modification to a development that was reviewed by a municipality and exempted
40 pursuant to this subsection or was reviewed by the department prior to a determination that
41 a municipality has capacity pursuant to this subsection is exempt as long as the modification
42 will not cause the total area of the development to exceed the maximum acreage specified
43 in this subsection for that type of development or, based upon information submitted by the
44 municipality concerning the development and modification, the department determines that
45 the modification may be adequately reviewed by the municipality.

