



125th MAINE LEGISLATURE

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Legislative Document

No. 159

S.P. 52

In Senate, January 25, 2011

**An Act To Foster Economic Development by Improving
Administration of the Laws Governing Site Location of
Development and Storm Water Management**

Reference to the Committee on Environment and Natural Resources suggested and ordered printed.

Joseph G. Carleton Jr.

JOSEPH G. CARLETON, JR.
Secretary of the Senate

Presented by Senator SAVIELLO of Franklin.
Cosponsored by Senators: COLLINS of York, RECTOR of Knox, SNOWE-MELLO of
Androscoggin, THIBODEAU of Waldo, THOMAS of Somerset, TRAHAN of Lincoln,
Representative: CEBRA of Naples.

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

2 **Sec. 1. 38 MRSA §420-D, sub-§9**, as amended by PL 2009, c. 602, §1, is further
3 amended to read:

4 **9. Rules.** ~~Rules~~ With the exception of minor clerical corrections and technical
5 clarifications that do not alter the substance of requirements applying to projects, rules
6 adopted pursuant to this section after January 1, 2010 and before January 1, 2012 are
7 major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. Any rules
8 adopted by the department pursuant to this section on or after January 1, 2012 are routine
9 technical rules as defined in Title 5, chapter 375, subchapter 2 A, except that those rules
10 that qualify as state mandates pursuant to the Constitution of Maine, Article IX, Section
11 21 are major substantive rules as defined in Title 5, chapter 375, subchapter 2 A.

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

14 **5. Subdivision.** A "subdivision" is the division of a parcel of land into ~~5~~ 10 or more
15 lots to be offered for sale or lease to the general public during any 5-year period, if the
16 aggregate land area includes more than ~~20~~ 40 acres; except that when all lots are for
17 single-family, detached, residential housing, common areas or open space a "subdivision"
18 is the division of a parcel of land into ~~15~~ 30 or more lots to be offered for sale or lease to
19 the general public within any 5-year period, if the aggregate land area includes more than
20 ~~30~~ 60 acres. The aggregate land area includes lots to be offered together with the roads,
21 common areas, easement areas and all portions of the parcel of land in which rights or
22 interests, whether express or implied, are to be offered. This definition of "subdivision"
23 is subject to the following exceptions:

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

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

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

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

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

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

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

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

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

10 (1) Sale or lease of common lots created with a conservation easement as
11 defined in Title 33, section 476, ~~provided that~~ as long as the department is made a
12 party; and

13 H. The transfer of contiguous land by a permit holder to the owner of a lot within a
14 permitted subdivision is exempt from review under this article, ~~provided that~~ as long
15 as the land was not owned by the permit holder at the time the department approved
16 the subdivision. Further division of the transferred land must be reviewed under this
17 article.

18 The exception described in paragraph F does not apply, and the subdivision requires site
19 location approval, whenever the use of a lot described in paragraph F changes or the lot is
20 offered for sale or lease to the general public without the limitations set forth in paragraph
21 F. For the purposes of this subsection only, a parcel of land is defined as all contiguous
22 land in the same ownership provided that lands located on opposite sides of a public or
23 private road are considered each a separate parcel of land unless that road was established
24 by the owner of land on both sides of the road subsequent to January 1, 1970. A lot to be
25 offered for sale or lease to the general public is counted, for purposes of determining
26 jurisdiction, from the time a municipal subdivision plan showing that lot is recorded or
27 the lot is sold or leased, whichever occurs first, until 5 years after that recording, sale or
28 lease.

29 **Sec. 3. 38 MRSA §482, sub-§6**, as amended by PL 1993, c. 383, §18 and affected
30 by §42, is further amended to read:

31 **6. Structure.** A "structure" means:

32 B. Buildings, parking lots, roads, paved areas, wharves or areas to be stripped or
33 graded and not to be revegetated that cause a total project to occupy a ground area in
34 excess of ~~3~~ 10 acres. Stripped or graded areas that are not revegetated within a
35 calendar year are included in calculating the ~~3-acre~~ 10-acre threshold.

36 **Sec. 4. 38 MRSA §484, sub-§3, ¶H** is enacted to read:

37 H. In making a determination under this subsection regarding a development's effects
38 on existing uses, scenic character or protected natural resources, as defined by section
39 480-B, subsection 8, the department shall apply the same standards as provided in
40 rules adopted pursuant to the Natural Resources Protection Act.

