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Legislative Document

No. 442

S.P. 171

In Senate, February 24, 2015

An Act To Clarify Municipal Capacity for Site Location of Development and Encourage Local Development

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

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator VOLK of Cumberland.

Cosponsored by Senators: CUSHING of Penobscot, GERZOFKY of Cumberland, LIBBY of Androscoggin, MILLETT of Cumberland, Representatives: SIROCKI of Scarborough, VACHON of Scarborough.

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

2 **Sec. 1. 38 MRSA §488, sub-§19**, as amended by PL 2011, c. 655, Pt. FF, §13
3 and affected by §16 and amended by c. 657, Pt. W, §5, is further amended to read:

4 **19. Municipal capacity.** A structure, as defined in section 482, subsection 6, that is
5 from 3 acres up to and including 7 acres or a subdivision, as defined in section 482,
6 subsection 5, that is made up of 15 or more lots for single-family, detached, residential
7 housing, common areas or open space with an aggregate area of from 30 acres up to and
8 including 100 acres is exempt from review under this article if it is located wholly within
9 a municipality or municipalities meeting the criteria in paragraphs A to D as determined
10 by the department and it is located wholly within a designated growth area as identified in
11 a comprehensive plan adopted pursuant to Title 30-A, chapter 187, subchapter 2. The
12 planning board of the municipality in which the development is located or an adjacent
13 municipality may petition the commissioner to review such a structure or subdivision if it
14 has regional environmental impacts. This petition must be filed within 20 days of the
15 receipt of the application by the municipality. State jurisdiction must be exerted, if at all,
16 within 30 days of receipt of the completed project application by the commissioner from
17 the municipality or within 30 days of receipt of any modification to that application from
18 the municipality. Review by the department is limited to the identified regional
19 environmental impacts. The criteria are as follows:

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

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

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

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

37 The department, in consultation with the Department of Agriculture, Conservation and
38 Forestry, shall publish a list of those municipalities determined to have capacity pursuant
39 to this subsection. This list need not be established by rule and must be published by
40 January 1st of each year. The list must specify whether a municipality has capacity to
41 review structures or subdivisions of lots for single-family, detached, residential housing,
42 common areas or open space or both types of development. The department may
43 recognize joint arrangements among municipalities and regional organizations in

1 determining whether the requirements of this subsection are met. The department may
2 review municipalities that are determined to have capacity pursuant to this subsection for
3 compliance with the criteria in paragraphs A to D, and if the department determines that a
4 municipality does not meet the criteria, the department may modify or remove the
5 determination of capacity.

6 A modification to a development that was reviewed by a municipality and exempted
7 pursuant to this subsection or was reviewed by the department prior to a determination
8 that a municipality has capacity pursuant to this subsection is exempt as long as the
9 modification will not cause the total area of the development to exceed the maximum
10 acreage specified in this subsection for that type of development or, based upon
11 information submitted by the municipality concerning the development and modification,
12 the department determines that the modification may be adequately reviewed by the
13 municipality.

14 **SUMMARY**

15 This bill gives a municipality determined by the Department of Environmental
16 Protection to have capacity to review certain development projects the authority to review
17 modifications to a development project.