

# MAINE STATE LEGISLATURE

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New Draft of: S. P. 362, L. D. 1061  
FIRST REGULAR SESSION

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ONE HUNDRED AND TENTH LEGISLATURE

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**Legislative Document**

**No. 1594**

S. P. 598

In Senate, May 11, 1981

Reported by the Majority of the Committee on Judiciary and Printed under  
Joint Rules No. 2.

MAY M. ROSS, Secretary of the Senate

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

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**AN ACT to Clarify the Status of Certain Real Estate Titles in the State.**

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

12 MRSA § 559 is enacted to read:

§ 559. **Filled lands that once were or may have been submerged or intertidal lands**

1. **Legislative findings and policy.** The Legislature finds that throughout the state's history various lands that once were or once may have been submerged or intertidal lands have been filled so as now to be indistinguishable in appearance and use from the uplands beyond the high water mark. These lands were filled prior to the requirement of permits under sections 4701 to 4709, as replaced by Title 38, sections 471 to 478, and have been sold, leased, taxed and otherwise treated in good faith by the State, municipalities and private citizens as owned in fee by private citizens. The recent increase in public awareness of the public trust in all public lands of the State has caused uncertainty concerning the location, ownership and alienability of coastal and great pond shorelands that were or may have been created in the past by filling submerged or intertidal lands. This uncertainty hinders the use, development and proper governmental administration of coastal and great pond shorefront property and threatens to involve the State, municipalities and private parties in frequent and complicated litigation. The process of locating these lands and asserting any claims by the State would consume inestimable time and expense for the State and private

citizens, many of whom have purchased property without knowledge of the filled lands. These lands, having been filled, are presently valueless for purposes of the public trust in submerged and intertidal lands. The public benefit will therefore be promoted by clarifying the status of real estate titles to these filled lands by declaring these filled lands free of the public trust. This declaration will not impair the public trust in or the power of the Legislature to administer submerged and intertidal lands remaining throughout the State and beyond such filled lands, which presently existing submerged and intertidal lands are still physically useable for trust purposes and in which the public interest is paramount.

2. Declaration of clear title. Titles to properties and lands that once were or may have been submerged or intertidal lands subject to the state's ownership in public trust that have been filled as of October 1, 1975, are hereby declared and conveyed to the owners of any such filled lands by the State free of any claimed ownership in public trust to the extent the areas of these properties and lands were not submerged or intertidal lands on that date.

3. Operation of the section. The conveyance made in this section is a quitclaim and release of any and all interest of the State in these lands only and shall not create a cause of action in any person against the State for damages or otherwise arising out of state ownership of these lands prior to the effective date of this section.

This section shall not be construed either to convey or release rights or interests acquired by the State in filled lands by gift, purchase or the power of eminent domain or to affect any obligations, rights or liabilities created by the operation of Title 12, sections 4701 to 4709 as later replaced by Title 38, sections 471 to 478 or by permits issued thereunder. This section shall be retroactive to October 1, 1975.

#### STATEMENT OF FACT

This amendment removes the emergency enactor from the original bill.

Section 1 of the bill has been clarified by adding a specific reference to great pond property.

Section 2 has been clarified by deleting the phrase "owners of record" and inserting "owners of such filled lands" to avoid any problems that may have arisen by conflicting claims of ownership as a result of adverse possession or competing claims of title. In these instances, those claiming to be "owners" under the Act would be required to settle their conflicting claims by private litigation, as in the case of other land disputes. A further clarification replaces the phrase "subject to tidal action" with the words "intertidal lands" to remove an ambiguity.

Section 3 has been added:

1. To make it clear that the nature of the title conveyed is only a release and quitclaim of the state's interest;

2. To ensure that no cause of action is created for any person arising out of the state's ownership of filled lands prior to the effective date of this Act; and

3. To make it clear that this Act does not affect rights acquired by the State through gift, purchase or eminent domain in addition to any obligations created under the Wetlands Act.

The effective date has been amended to October 1, 1975, the date which the current submerged lands law took effect.