

MAINE STATE LEGISLATURE

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(Governor's Bill)
SECOND SPECIAL SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1698

H. P. 1706

House of Representatives, September 25, 1981

Reference to the Committee on Judiciary suggested and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Hobbins of Saco.

Cosponsors: Senator Devoe of Penobscot, Senator C. Sewall of Lincoln and Senator Conley of Cumberland.

STATE OF MAINE

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

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

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

12 MRSA § 559 is enacted to read:

§ 559. Filled-in submerged lands

1. **Legislative intent; purpose.** The Legislature finds that the ownership of certain areas along Maine's coast and great ponds is uncertain because portions of the submerged and intertidal lands have been filled in so as now not to be subject to tidal action or below water. These lands were filled prior to the enactment of Public Law 1975, chapter 287, the Submerged Lands Act, as recodified by Public Law 1979, chapter 545. It appears that prior to the enactment of the Submerged Lands Act, and to some degree afterwards, these filled-in portions of the submerged or intertidal lands have been sold, leased, taxed and otherwise treated in good faith by municipalities and private citizens as if they were owned in fee by private parties. Due to the lack of readily available documentation of the natural low and high watermarks in most areas along the coast and great ponds, the process of setting the boundaries between submerged or intertidal lands and the upland would consume enormous time and expense for the State and the private parties.

The Legislature recognizes that the submerged lands are owned by the State for the benefit of the public. These lands are impressed with a public trust. This ownership and public trust is derived from the Massachusetts Colonial Ordinance of 1641-1647. As a result of this, submerged land is not, like ordinary private land, held in fee simple absolute but is impressed with the public trust which gives the public's representatives an interest and responsibility in its development.

The Legislature finds that those portions of the submerged and intertidal lands which have been filled in prior to October 1, 1975, the date the Submerged Lands Act was effective, are substantially valueless for trust uses and such lands can be disposed of without impairment of the public trust in what remains. The public benefit will be promoted by clarifying the status of real estate titles to such filled lands, thereby permitting full use and development.

2. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Filled land" means portions of the submerged and intertidal lands which have been rendered by the acts of man to be no longer subject to tidal action or below the natural low watermark on October 1, 1975.

B. "Intertidal land" means all land affected by the tides between natural high watermark and either 100 rods seaward therefrom or the natural low watermark, whichever is closer to the natural high watermark.

C. "Person" means individuals, partnerships, corporations and other private legal entities, but does not include the State and its political or governmental subdivisions or the Federal Government.

D. "Submerged land" means all land affected by the tides seaward of the natural low watermark or 100 rods from the natural high watermark, whichever is closer to natural high watermark and all land below natural low watermark under great ponds.

3. **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 were filled on October 1, 1975, are declared and released 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.

4. **Confirmation.** Any person claiming an interest in such land may seek confirmation from the Bureau of Public Lands that particular land is filled land and receive a declaration that may be filed in the appropriate registry of deeds. Such confirmation shall not be construed to create any rights of ownership in any person per se, but shall be declaratory of the status of the land as to whether it had been filled on October 1, 1975. The application for confirmation shall be filed on a form prescribed by the Bureau of Public Lands which shall contain the following information:

- A. Name and address of applicant;
- B. An accurate legal description of the filled land; proof that the land was filled on October 1, 1975 and sufficient details, such as a survey by a registered land surveyor, to locate the filled land on a map of general acceptability;
- C. The area of acreage of the filled land;
- D. The date acquired;
- E. Evidence that written notice of the application for confirmation has been sent to any other owners of record; and
- F. Other information necessary for the purposes of this section.

A filing fee of \$50 shall accompany each application to cover administrative costs, which moneys shall be deposited in and disbursed in accordance with section 557 to accomplish the purposes of this section.

5. Filing. The following provisions apply to filing.

- A. The application may be filed with the Bureau of Public Lands at any time.
- B. If the applicant demonstrates that the land is filled land as defined in subsection 2, paragraph A, the Director of the Bureau of Public Lands shall issue a declaration to the effect. The director shall respond to the application within 30 days of the date the application is received by the director.

6. Termination of leases. Any leases entered into by the Director of the Bureau of Public Lands pursuant to section 558 for filled land, as defined in subsection 2, paragraph A, are terminated. Lessees shall not be reimbursed for rental paid under such leases.

7. Operation of this section; retroactive date. This section shall not create a cause of action on behalf of any person against the State for damages or otherwise arising out of state ownership of lands prior to the effective date of this section. A declaration of confirmation by the Bureau of Public Lands pursuant to subsection 4 shall not constitute a decision by the State as to which claimant, if any, may have title, and the State, its officers, agents and employees shall not be liable to any person by reason of having made or having refused to make such a declaration. Failure to apply for or receive confirmation or a declaration under subsection 4 shall not affect any rights granted or released by this section. This section shall not be construed to affect the rules of law otherwise in force relating to accretion or reliction of filled or other lands along the great ponds or the coast, nor to either convey or release rights or interest 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 sections 4701 to 4709 as later replaced by Title 38, sections 471 to 478 or by permits issued under those sections. This section shall be retroactive to October 1, 1975.

STATEMENT OF FACT

On June 19, 1981, the Legislature enacted S.P. 598, L.D. 1594, "AN ACT to Clarify the Status of Certain Real Estate Titles in the State," releasing the ownership rights of the State in filled, formerly submerged land now indistinguishable from the adjacent upland. On August 27, 1981, the Justices of the Supreme Judicial Court rendered an advisory opinion finding this Act to be consistent with the State's trust obligations with respect to the submerged lands.

This bill is introduced for the purpose of permitting that legislation to become effective at the earliest possible time.

This bill is identical to L.D. 1594 in every respect and the legislative history of that Act should be construed to be applicable to this bill, except as follows: In Title 12, section 559, subsection 2, paragraph A and thereafter, the word "on" replaces the words "as of" to make it clear the land to which the release is effective must have been filled on that date; in Title 12, section 559, subsection 4 the words "claiming an interest in such land" are added following the word "person" to assure that persons with no interest in a particular tract do not interfere with the rights of owners or cause the bureau unnecessary work; also, a new 2nd sentence is added to make it clear that this subsection does not add or detract from the rights created in subsection 3 with respect to any particular claimant, but simply serves as a convenient central administrative mechanism to give some indication of the historical status of the land in question on October 1, 1975; also in Title 12, section 559, subsection 4 a new paragraph E is added for the protection of landowners by requiring claimants with an interest to notify their coclaimants or conflicting claimants of their intention to seek a declaration so that others may have an opportunity to bring forward relevant information; finally, in Title 12, section 559, subsection 4, the last paragraph, it is made clear that the filing fees secured under this bill may be used to defray the costs of researching and drafting the declarations of confirmation at the expense of the applicants; and in Title 12, section 559, subsection 7 a new sentence is added to make it clear that in the event of a private ownership dispute between 2 or more claimants to the same tract of land, the State shall have no liability to any party because it had made or declined to make a confirmation that the land at issue was subject to this bill at the request of any person and that the usual rules relating to natural accretion and reliction apply to filled land subject to this bill as well as natural littoral land.