

MAINE STATE LEGISLATURE

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L.D. 1930

2 DATE: 4-4-06

(Filing No. S-556)

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6 JUDICIARY

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12 STATE OF MAINE
14 SENATE
16 122ND LEGISLATURE
SECOND REGULAR SESSION

18 COMMITTEE AMENDMENT "A" to S.P. 730, L.D. 1930, Bill, "An
20 Act Regarding Working Waterfront Covenants under the Land For
Maine's Future Board"

22 Amend the bill by striking out the title and substituting
24 the following:

26 'An Act Regarding Working Waterfront Covenants'

28 Further amend the bill by striking out everything after the
enacting clause and before the summary and inserting in its place
30 the following:

32 'Sec. 1. 33 MRSA c. 6-A is enacted to read:

34 CHAPTER 6-A

36 WORKING WATERFRONT COVENANTS

38 §131. Definitions

40 As used in this chapter, unless the context otherwise
indicates, the following terms have the following meanings.

42 1. Commercial fisheries businesses. "Commercial fisheries
44 businesses" means any enterprise directly or indirectly concerned
46 with the commercial harvest of wild or aquacultured marine
organisms, whose primary source of income is derived from these
48 activities. "Commercial fisheries businesses" includes without
limitation:

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A. Licensed commercial fishermen, aquaculturists and fishermen's cooperatives;

B. Persons providing direct services to commercial fishermen and aquaculturists or fishermen's cooperatives, as long as provision of these direct services requires the use of working waterfront real estate; and

C. Municipal and private piers and wharves operated to provide waterfront access to commercial fishermen, aquaculturists or fishermen's cooperatives.

2. Qualified holder. "Qualified holder" or "holder" means a governmental entity authorized to hold an interest in real property or a nonprofit organization organized under state law whose purposes include the permanent protection of working waterfront or the enlargement of working waterfront opportunities for commercial fisheries businesses.

3. Third-party right of enforcement. "Third-party right of enforcement" means a right provided in a working waterfront covenant to enforce any of its terms granted by the grantor and holder of the covenant to a governmental body or nonprofit corporation that meets the qualifications of a holder.

4. Working waterfront covenant. "Working waterfront covenant" means an agreement in recordable form between the owner of working waterfront real estate and one or more qualified holders that permits a qualified holder to control, either directly or indirectly, the use, ownership and sales price of working waterfront real estate for the primary purpose of making and preserving the permanent availability and affordability of that real estate for commercial fisheries businesses. A working waterfront covenant may include a 3rd-party right of enforcement.

5. Working waterfront real estate. "Working waterfront real estate" or "real estate" means land, legally filled lands, piers, wharves and other improvements to lands all adjacent to the navigable coastal waters of the State.

§132. Creation; conveyance; acceptance; duration; filing

1. Working waterfront covenant. Except as otherwise provided in this chapter, a working waterfront covenant may be created, conveyed, recorded, assigned, released, modified, terminated or otherwise altered or affected in the same manner as other real estate covenants created by written instrument.

2. Right or duty. A right or duty in favor of or against a qualified holder may not arise under a working waterfront covenant unless it is accepted in writing by the qualified holder.

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3. Limitation. Except as provided in this chapter, a working waterfront covenant is unlimited in duration unless a change of circumstances renders the working waterfront covenant no longer in the public interest as determined in an action under section 133, subsection 2.

4. Filing. A working waterfront covenant must be recorded in the County Registry of Deeds, and a copy of the covenant must be filed with the Executive Department, State Planning Office together with a map showing with specificity the location of the affected real estate on the form or forms that the State Planning Office requires.

5. Other interest. An interest in real property in existence at the time a working waterfront covenant is created is not affected by the covenant unless the owner of the interest is a party to the covenant or consents to the covenant.

6. Right to enter land. The instrument creating a working waterfront covenant must provide for the right by the qualified holder to enter the real property to ensure compliance.

§133. Judicial actions

1. Owners; qualified holders. An action affecting a working waterfront covenant may be brought or intervened in by:

- A. An owner of an interest in the real property burdened by the covenant;
- B. A qualified holder of the benefit of the working waterfront covenant;
- C. The municipality in which the real property burdened by the covenant is located; or
- D. The Attorney General.

2. Power of court. The court has the following powers.

- A. The court may enforce a working waterfront covenant by injunction or other proceeding at law or in equity.
- B. Acting in accordance with charitable trust principles, the court may modify, terminate or deny equitable enforcement of a working waterfront covenant in an action brought by a party pursuant to subsection 1. In taking such an action, the court must find that, due to a change in circumstance, the covenant no longer serves the public

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2 interest in protecting or enhancing the commercial marine
3 fisheries or related businesses of the State. The Attorney
4 General must be made a party to any action under this
5 paragraph and written notice must be provided to the
6 Commissioner of Marine Resources.

7 C. If the court modifies, terminates or denies equitable
8 enforcement of a working waterfront covenant, the court may
9 order payment by the landowner of money or other damages to
10 the holder or the State, which shall apply the same in a
11 manner consistent with the purposes of this law as approved
12 by the court.

13 The fact that a working waterfront property might be used
14 for more valuable economic purposes may not be considered in
15 determining whether a working waterfront covenant is no longer in
16 the public interest.

17 **§134. Scope of working waterfront covenant**

18 A working waterfront covenant must include without
19 limitation at least one of the following terms:

20 1. Resale price of working waterfront real estate.
21 Limitations on the resale price of working waterfront real estate;

22 2. Amount of equity appreciation. Limitations on the
23 amount of equity appreciation that a landowner may derive from
24 ownership of working waterfront real estate;

25 3. Improvements to working waterfront real estate.
26 Limitations on the type, extent, use or dollar value of
27 improvements that may be made to working waterfront real estate;

28 4. Uses to which working waterfront real estate may be
29 devoted. Restrictions on the uses to which working waterfront
30 real estate may be devoted, which must be consistent with the
31 purposes of this chapter;

32 5. Options to purchase. The grant of rights of first
33 refusal or options to purchase to qualified holders or their
34 assigns, subject to the terms and conditions of the working
35 waterfront covenant;

36 6. Maintenance and insurance of working waterfront real
37 estate. The obligation to maintain, operate and insure working
38 waterfront real estate;

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2 7. Construction and materials. The right to restrict or
specify types of buildings, structures and materials that may be
used in improvements on working waterfront real estate; and

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6 8. Acts that may enhance affordability of working
waterfront real estate. The right to prohibit, limit or require
other acts that may enhance or allow the affordability and
8 availability of working waterfront real estate to commercial
marine fisheries businesses in the future.

10 **§135. Validity**

12 A working waterfront covenant is valid and enforceable
14 notwithstanding any of the following conditions.

16 1. Not appurtenant to interest in real property. The
working waterfront covenant is not appurtenant and does not run
18 with an interest in real property.

20 2. Assignable to another holder. The working waterfront
covenant can be or has been assigned to another qualified holder.

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24 3. Not recognized at common law. The working waterfront
covenant is not of a character traditionally recognized at common
law.

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28 4. Imposes negative burden. The working waterfront
covenant imposes a negative burden.

30 5. Imposes affirmative obligations. The working waterfront
covenant imposes affirmative obligations upon the owner of an
32 interest in the burdened property or upon the qualified holder.

34 6. Benefit does not touch or concern real property. The
benefit of the working waterfront covenant is held by a qualified
36 holder who has not retained property that would benefit from
enforcement of the working waterfront covenant, or the benefit
38 does not touch or concern real property in any other way.

40 7. No privity of estate or contract. There is no privity
of estate or privity of contract.

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44 8. Does not run to successors or assigns. The working
waterfront covenant does not run to the successors or assigns of
the qualified holder.

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48 9. Unreasonable restraint on alienability. The working
waterfront covenant may be considered to be an unreasonable
restraint on alienability.

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10. In violation of rule against perpetuities. The working waterfront covenant may violate the rule against perpetuities.

§136. Application

1. Interest created after effective date. This chapter applies to any interest that complies with this chapter created after the effective date of this chapter, whether designated as a working waterfront covenant or an equitable servitude, restriction, easement or other interest in real estate.

2. Working waterfront covenant created before effective date. This chapter applies to any working waterfront covenant created before the effective date of this chapter if the working waterfront covenant would have been enforceable had it been created after the effective date of this chapter, unless retroactive application contravenes the Constitution of Maine or the United States Constitution.

3. Chapter does not invalidate interest. This chapter does not invalidate any interest, whether designated as a working waterfront covenant or an equitable servitude, restriction, easement or other interest in real estate, that is otherwise enforceable under other laws of this State.'

SUMMARY

This amendment clarifies the definitions of "commercial fisheries businesses," "qualified holder," "3rd-party right of enforcement" and "working waterfront covenant." It also clarifies the filing requirements applicable to working waterfront covenants.

This amendment clarifies that an existing interest is not affected unless the owner is a party to the covenant or consents to the covenant.

This amendment authorizes a municipality to bring an action or to intervene in an action affecting a working waterfront covenant.

This amendment requires a court, in modifying, terminating or denying equitable enforcement of a working waterfront covenant, to find that, due to a change in circumstance, the covenant no longer serves the public interest in protecting or enhancing the commercial marine fisheries or related businesses in the State. This amendment requires the Attorney General to be made a party and also requires written notice to the Commissioner of Marine Resources.

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COMMITTEE AMENDMENT "A" to S.P. 730, L.D. 1930

2 This amendment clarifies that the restrictions in the
4 working waterfront covenant applies to uses of the subject real
6 estate and does not limit the types of persons or businesses that
may own, lease or use the real estate.

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FISCAL NOTE REQUIRED
(See attached)

COMMITTEE AMENDMENT



Approved: 03/21/06 *MAC*

122nd MAINE LEGISLATURE

LD 1930

LR 3031(02)

An Act Regarding Working Waterfront Covenants under the Land for Maine's Future Board

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Minor revenue increase - General Fund

Correctional and Judicial Impact Statements

This bill may increase the number of civil suits filed in the court system.

The collection of additional filing fees may increase General Fund revenue by minor amounts.

Fiscal Detail and Notes

The additional costs associated with this legislation can be absorbed by the State Planning Office and the Department of the Attorney General utilizing existing budgeted resources.