

# MAINE STATE LEGISLATURE

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# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 1388

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S.P. 432

In Senate, March 26, 2019

**Resolve, Directing the Attorney General To Pursue the State's  
Claim That It Holds Title to Maine's Intertidal Lands**

(EMERGENCY)

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator DOW of Lincoln.  
Cosponsored by Representative EVANGELOS of Friendship.

1           **Emergency preamble. Whereas,** acts and resolves of the Legislature do not  
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3           **Whereas,** both the date of adjournment of the 129th Legislature and the date of the  
4 pending Law Court's decisions involving title to Maine's intertidal lands are unknown;  
5 and

6           **Whereas,** it is unknown whether the State's claim of title to its intertidal lands will  
7 be fully vindicated by pending decisions of the Law Court; and

8           **Whereas,** the State's claim of title to its intertidal lands is rooted in part in  
9 provisions and doctrines within the United States Constitution, federal laws and United  
10 States Supreme Court case law; and

11           **Whereas,** a final determination of the scope and meaning of these federal  
12 provisions, doctrines, laws and cases that leads to the conclusion that Maine in fact holds  
13 title to its intertidal lands can be made only by the United States Supreme Court; and

14           **Whereas,** prior Law Court cases, said to cede Maine's intertidal lands to upland  
15 owners, were not appealed to the United States Supreme Court, thus leaving unresolved  
16 these federally rooted claims that Maine holds title to its intertidal lands; and

17           **Whereas,** petitions for certiorari to the United States Supreme Court must be timely  
18 filed in order to raise these federally rooted claims that Maine holds title to its intertidal  
19 lands; and

20           **Whereas,** in the judgment of the Legislature, these facts and uncertainties create an  
21 emergency within the meaning of the Constitution of Maine and require the following  
22 legislation as immediately necessary for the preservation of the public peace, health and  
23 safety; now, therefore, be it

24           **Sec. 1. Certiorari review by the United States Supreme Court of**  
25 **unresolved federal questions related to intertidal lands in Maine. Resolved:**  
26 That, inasmuch as prior Law Court cases have ceded title to all of this State's intertidal  
27 land to upland owners in contexts where certiorari review by the United States Supreme  
28 Court of contrary claims of title by the State to these lands, rooted in part in federal  
29 constitutional provisions and doctrines, congressional enactments and United States  
30 Supreme Court cases, was not sought, and recognizing that the United States Supreme  
31 Court is the final arbiter of the scope and meaning of all federally rooted claims of land  
32 ownership, the Attorney General shall seek United States Supreme Court review of any  
33 future Law Court decision that does not fully vindicate the State's claim of title to its  
34 intertidal lands. In any such review the Attorney General shall raise not only the full  
35 range of federally rooted claims of title by the State to its intertidal lands but also the  
36 failure of the State's present judge-made intertidal land law to adhere to provisions of the  
37 Constitution of Maine requiring reasonableness in the alienation of trust property and  
38 imposing separation of powers limitations on the judicial branch of this State's  
39 government.

