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Testimony on L.D. 1209

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by Richard Barringer
Director, Bureau of Public Lands
May 1, 1975

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The purpose of the Coastal Island Registry is basically to create title in the people of the State of Maine to unowned coastal islands. The first section of the Registry law entitled "Legislative intent and purpose" says, and I quote, "to establish title to land that was once granted by the State of Maine, or by grant or charter before Maine became a State and subsequently owned by a person or persons who either died intestate without heirs or with heirs who abandoned the property, the Legislature directs the creation of the Coastal Island Registry and the following procedure to establish title to island property in Maine's coastal waters."

The problem is that the procedures under the present law do not actually - or clearly - establish title to such islands.

The present law uses two key terms to define which islands are or will be State-owned. These terms are "incidence of ownership" and "title of record."

"Incidence of ownership" means a written transfer of the property, payment of taxes for the property, or occupation or cultivation of the land.

"Title of record" means a deed or probate recorded in the Registry of Deeds.

Now almost anyone can effect an "incidence of ownership" by pitching a tent on an island or writing up a quit claim deed to it, or going to the local town office and paying taxes on the island.

Creating a "title of record" is just as simple. The would-be island owner merely takes his or her bogus deed to the Registry and gets it recorded.

This is the very sort of island grabbing that the Legislature hoped to stop when it created the Registry.

L.D. 1209 finally solves the problem by establishing criteria for State island ownership which are more helpful than the concepts of "incidence of ownership" and "title of record." The bill uses the concept of the "true owner" as the basis for determining the validity of claims to coastal island ownership.

A "true owner" is defined as a person who holds title by adverse possession or which can be traced back to a document which:

- 1) was dated before July 13, 1913 (the date after which the Legislature prohibited the further sale of State-owned islands) and
- 2) describes the island in enough detail to locate it on a map.

The definition is a bit more complicated than that, but it addresses the basic question of whether an island is owned or unowned by private parties, and it makes good legal and practical sense:

If someone registers a claim with the Coastal Island Registry and he or she is found by the State to be a "true owner", then the State will not dispute that claim regardless of whether or not the registrant ever visited the island or ever recorded his or her otherwise valid title. On the other hand, a registrant may have a carefully recorded bogus deed and have planted a beautiful vegetable garden on an island, but if he or she is not the "true owner", the State will still be able to secure its interest in the island.

Another very important feature of L.D. 1209 is that it avoids the constitutional problems of the section of the present law which vests all unregistered islands in the State in 1984. Under this bill, no true owner can be divested by the State - even if he or she has not registered with

the Coastal Island Registry. The State will act as guardian or trustee for unregistered islands until a true owner comes forward, but the State will only own in fee those islands for which there is no true owner.

Aside from assuring that their islands will not be taken by the State in 1984, L.D. 1209 helps out island owners who might have been unfairly burdened by the present law in several other ways.

The bill moves the deadline for registration forward one year to December 31, 1975. The Registry only went into full operation in January 1974. Newspaper notice was given to island owners in December 1973 and July 1974. Notice was sent with tax bills in 1974. One year does not seem to be an adequate registration period. Only one-third of the islands have been registered to date, but a great many more are estimated to be in private ownership.

The bill repeals the \$200.00 penalty fee for late registration because it works a hardship on those owners who did not receive actual notice of the registration requirement and because it discourages people from registering their islands now. Instead, a standard \$50.00 fee for the State's management efforts will be assessed of true owners who have not appeared before December 31, 1975.

The bill sets up an appeals procedure for registrants whose claims are ruled invalid. The Director of the Bureau of Public Lands in consultation with the Attorney General will rule, based on the State's legal research into questionable cases, on the validity of ownership claims. The burden of proving "true ownership" is not on the registrant - unless the claim is ruled invalid. In this case, the registrant may produce additional evidence, and if the ruling is not reversed, may appeal the ruling to the courts.

L.D. 1209 protects the State as well as the legitimate island owner. It establishes a definition and a penalty for fraudulent registration to

deter persons from attempting to falsely claim public or private islands.

The bill also clarifies the Registry's rule-making authority.

I could go much further into the details of the bill and the improvements it makes in the present law, but in summary I will say that the changes that L.D. 1209 effects are technical in nature. The intent and purpose of the Coastal Island Registry is unaltered: to recover the public islands for the people of Maine and to allow for their use and management in the public interest.

We have prepared explanatory notes which provide a section by section detailed analysis of the bill. We also have an amendment to correct a typographical error that was made in drafting the bill.

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Explanatory Notes

Act to Facilitate the Operation of the Coastal Island Registry and
to Establish Criteria for State Title in Coastal Islands

The 106th Legislature created a Coastal Islands Registry to recover to the the State knowledge of the number, location, and size of coastal islands still in State ownership.

The ultimate purpose of this Act was to restore to the public their rights in these valuable islands.

Unfortunately, the law goes farther than necessary to accomplish this objective, and contains provisions which are either a hardship on coastal property owners or a potentially unconstitutional taking of private land.

L.D. 1209 is designed to safeguard the beneficial aspects of the old law, to eliminate those which are constitutionally suspect, and to provide a mechanism for the State to hold abandoned island property in trust.

A section by section explanation of L.D. 1209 follows:

§ 1 (A) The definition of and all further references to the term "Incidence of ownership" are repealed. "Incidence of ownership" is extremely difficult to prove or disprove and does not address the central issues raised in a determination of the State's interest in island property.

(B) The term "island" is replaced by "coastal island" to provide clarity and consistency.

(C) The definition of "residential structure" (used in the exemption provisions of the law - § 1210) is tied to a specific point in time. Since more structures could be built, or existing ones demolished, it is conceivable that the process of adding and deleting islands from the Registry could go on indefinitely. This is unnecessary since the State needs to determine its ownership interest, if any, only once.

(D) The "true owner" concept is introduced to be used as the basis for determining the validity of claims to coastal island ownership. The term "record owner" which had been used means any person whose property interest is recorded with the Registry of Deeds. Because a person can be of record and yet not have good title, the concept of "record owner" is not as helpful as the concept of "true owner" in establishing criteria for valid title claims.

(E) "True owner" is defined to be a person who holds title by adverse possession or which can be traced back to a document which describes the island in enough detail to locate the island on a map and which was dated prior to July 13, 1913 (the date after which the Legislature prohibited the further sale of State-owned islands).

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(F) "Traceable", a key term in the definition of "true owner" is defined. A standard is established for inclusion of intestate succession in a chain of title. (Intestate succession means the transfer of title to an heir upon the death of an owner without a will.)

(G) "Written evidence of title", another key term in the definition of "true owner" is defined. The Director of the Bureau of Public Lands and the Attorney General are given some discretionary authority to determine what constitutes "written evidence of title." This is so that family Bibles, old letters, unrecorded deeds, out-of-state probate proceedings and other documents commonly accepted by property lawyers as establishing title can be considered.

(H) "Person" is the third key term in the definition of "true owner". The State and Federal governments are, by this definition, exempted from coastal island registration requirements.

(I) All of these new definitions have been added to provide a statutory plan for tracing good private titles to coastal islands and for rejecting the registrations of bogus claimants.

§ 2 (A) The Bureau of Public Lands is substituted for the Bureau of Forestry here and there throughout the law. The act which created the Department of Conservation authorized the Commissioner of Conservation to delegate custody and control of State islands previously held by Forestry to the Director of the Bureau of Public Lands. The Commissioner has done this.

(B) References to the State Planning Office are repealed. Although the State Planning Office was instrumental in the formation of the Registry, it does not play a large role in its ongoing functions.

§ 3 Because all coastal islands were and are required to be registered under § 1205, all coastal islands are required to be numbered. The numbering will make administration easier and less costly.

§ 4 (A) True owners or their authorized representatives are required to register.

(B) The frequently asked question as to whether or not a coastal island unnumbered by the Registry need be registered, is answered, following the intent of the law.

(C) The sentence governing the registration of islands assigned a single number by the Registry is further clarified and moved from the section defining "island" to this section on registration.

(D) The legal description of the property is required to be detailed enough to enable location on a map.

(E) It is clarified that an interest in a coastal island need be registered only once. Successive true owners need not re-register. The whole idea of the law has

been to determine by a process of elimination what islands have remained in State ownership. Once the State knows a bona fide private owner exists for an island, it has no further interest in it for Registry purposes.

The State can then focus its interest on those which have not been registered, and which may be State owned.

§ 5 (A) The deadline for registration is moved forward one year to December 31, 1975. Only one-third of the islands have been registered to date, but a great many more are estimated to be in private ownership.

(B) Registrations under the old law are grandfathered as valid filings (but not necessarily as valid claims).

(C) Three forms of notice to true owners who have failed to register are required. The law had required (in section 1210) that notice be mailed to all unregistered owners of record. This would have required an examination of every recorded deed in every coastal Registry of Deeds - a highly impractical task.

§ 6 (A) The State will officially secure its interest in unregistered islands belonging to it as of the date the new registration period ends. This changes present law which would automatically vest title to any unregistered island, whether it was privately owned or not, in the State.

This change is designed to make the law constitutionally acceptable, by eliminating any possible State attempt to assume ownership of privately owned islands."

§ 7 (A) Determinations of State trusteeship based on the concepts of "incidence of ownership" and "record owner" are repealed.

(B) The Bureau of Public Lands would act as a kind of guardian or trustee for unregistered islands unless and until a true owner came forward to register his interest.

Rather than the State trying to assert ownership over apparently abandoned islands, it would act as a trustee collecting rents and incomes and safeguarding the property while the true owner remains unknown.

If and when true owners do appear, the State will stop acting as trustee, but if such owners do not appear before December 31, 1975, a standard \$50.00 fee for the State's management efforts will be assessed.

§ 8 (A) Determinations of State trusteeship based on the concepts of "incidence of ownership" and "record owner" are repealed since the new standard of "true ownership" has been established.

(B) The termination of adverse possession on coastal islands is repealed. This had created an unfair distinction between those attempting to perfect adverse possession on mainland and island properties. The State's interest is unaffected because adverse possession cannot be had against the State anywhere in Maine. This provision

simply allows one private individual to establish adverse possession against another with ownership in an island.

(C) The \$200.00 penalty fee for late registration is repealed because it works a hardship on those owners who did not receive actual notice of the registration requirement and because it discourages people from registering their islands now.

(D) A procedure is established for determination by the Director of the Bureau of Public Lands and the Attorney General of the validity of all true ownership claims presented in coastal island registrations, and for appeals to the courts by registrants whose claims are rule invalid.

§ 9 (A) Exemption, which has been based on the owner, is based directly on the island to avoid confusion.

(B) A provision that a lien of \$100.00 to \$200.00 be placed on islands of unregistered record owners is repealed because it is unnecessary since the late registration penalty would also be repealed.

§ 10 The section which required recordation forever of every transfer of coastal island property is repealed. This section placed an impossible burden on the Register of Deeds, as many island transfers appear as obscure sentences in long legal descriptions and are easily overlooked. Subsequent transfers after registration of true ownership need not concern the State, and subsequent transfers after invalid registration can always be individually traced at the appropriate Registry of Deeds.

§ 11 Rulemaking authority is described to make it clear that the responsible agency is limited to only a few, relevant areas of regulation in connection with the Registry.

§ 12 The Director of the Bureau of Public Lands is substituted for the Director of the Bureau of Forestry. See explanation under section 2.

§ 13 A definition of and penalty for fraudulent registration are established to deter persons from attempting to fraudulently claim public or private islands.

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Note correction
on p. 3

Attorney General Joseph Brennan

Testimony on L.D. 1209

Two years ago I testified before this committee as the sponsor of the bill which created the Coastal Island Registry. I urged the passage of the bill because I believed then, as I do now, that the State of Maine must take action to secure the use of the public domain islands for the benefit of all Maine people for recreational and conservation purposes.

The Bureau of Public Lands and the Attorney General's Office have discovered, in the business of administering the Registry law, that the law needs a few changes to make it more effective, easier to administer, and simpler for island owners to comply with. The amendments which L.D. 1209 would enact are sound and utilitarian. They make it possible for the Registry to more fully accomplish the purposes which the Legislature intended.

Two years ago I emphasized that the public and the state's rights to use and protect its islands and ledges will continue to be in doubt so long as clear legal title is not established. L.D. 1209 assures that the State of Maine will be able to establish such title and able to allow the people of Maine the benefits of the ownership of their coastal islands.

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REMARKS ON L.D. 1209

by

Representative Mary Najarian

The Coastal Island Registry was created by the 106th Legislature in 1973 to answer some very complicated questions: Where are the State-owned islands: What size are they? And who are possible private claimants to these islands?

The Registry was intended to restore public rights to valuable island property - which was in State ownership, but which we did not know about.

Let me explain a little of the history which led to this dilemma.

Long before Maine became a state, the King of England, the King of France, and various colonial land proprietors granted coastal islands along with portions of the mainland to prospective colonizers. After the American Revolution, Massachusetts sold off Maine islands. Several towns sold islands. And when Maine became a state, she got into the island sales business as well - at least until 1913 when the Legislature prohibited the further sale of islands.

Coastal islands were a lot more difficult to locate and keep track of than mainland properties - especially in the days of sketchy maps and navigational charts. Grants and sales overlapped. Some islands were conveyed two or three times; others, not at all. Records were lost. Often, islands were not mentioned in subsequent deeds. Sometimes they were incorrectly located or unlocatable in the original grants. During periods of history when coastal islands were worth little or nothing, some islands were abandoned by their owners. Or an owner died without a will and without heirs so that

the island by law came back to the state.

When the Legislature in 1913 became concerned with saving the remainder of the State's island public domain, and prohibited further sales, they also commissioned an investigation of island titles to determine which islands were then in State ownership.

Although the investigator Melvin Simmons did a thorough historical study and established a card file indexing all islands on the navigational charts of the day, he did no individual island title searches and he missed more than half of the islands and ledges on the Maine coast, which were considered too small or unimportant to be shown on 1913 charts.

Some of these neglected smaller islands and ledges, however, offer the best wildlife habitat for certain species. And the market price for even small Maine islands is now approaching \$2,000-\$5,000 an acre.

So when the Coastal Planning Group of the State Planning Office in 1972 began to discover scores of islands in Penobscot Bay for which no owner could be found, they looked into some of the island history I have discussed and determined that legislation was necessary to unscramble the island ownership puzzle.

The Registry was established in the Bureau of Forestry and later transferred administratively within the new Department of Conservation to the Bureau of Public Lands which had been given jurisdiction over State public domain islands.

As the Bureau of Public Lands became more familiar with the workings of the Registry and with island ownerships and owners, they found that certain features of the law seemed inconsistent with the law's expressed purposes. They were also concerned with provisions that seemed to place unfair burdens on

island owners. The results of a Bureau of Public Lands pilot title searching project presented concrete evidence that it would be very difficult for the State to secure custody of unowned islands under the present law.

Assistant Attorney General Lee Schepps and Inland Fisheries and Game Acquisition Leader Dick Parks shared the Bureau's concerns. Late last year, Lee, Dick, and members of the Public Lands staff began to meet regularly to discuss and draft amendments to remedy the Coastal Island Registry's legal problems. These people gave a lot of time and careful thought to their task. Both State agencies and private Maine attorneys who deal with coastal island property have been consulted and had input in the amendments.

The bill you have before you, L.D. 1209, An Act to Facilitate the Operation of the Coastal Island Registry and the Establish Criteria for State Title in Coastal Islands, retains the purpose, intent, and the most workable and useful portions of the present law. It eliminates the inconsistencies and vague areas. And it sets forth clear guidelines for establishing State title to unowned islands, while making registrations for island owners easier and more equitable.

Dick Barringer, Director of the Bureau of Public Lands, will explain the details of the bill and tell you how it changes present law.