

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

March 26, 1981

Richard Anderson, Commissioner
Department of Conservation
State House Station #22
Augusta, Maine 04333

Dear Commissioner Anderson:

In a letter dated February 25, 1981, former Commissioner Barringer requested an opinion from this office on the constitutionality of L.D. 611, "AN ACT to Clarify the Status of Certain Real Estate Easements in the State," (a copy of which is attached hereto). In particular, inquiry was made as to whether L.D. 611 may be enacted as proposed as emergency legislation in light of the provisions of art. IV, pt. 3rd, § 16 of the Maine Constitution. It is our opinion that L.D. 611 may not be enacted as emergency legislation in view of the provision in it granting the right to a 30-year easement in State lands.

A review of L.D. 611 indicates that it amends the Submerged Lands Act (the "Act"), 12 M.R.S.A. § 558, which was enacted by P.L. 1975, c. 287, and recodified by P.L. 1979, c. 545. The last sentence of 12 M.R.S.A. § 558(3) now reads: "The owners of all structures actually upon submerged and intertidal lands on the effective date of this Act shall be deemed to have been granted. . . an easement [for a term of 30 years]." L.D. 611 would replace this sentence with the following:

The owners of all structures and filled land actually upon submerged and intertidal lands on September 14, 1979 shall be deemed to have been granted an easement for a term of 30 years for the purposes set forth in subsection 2, paragraph A on the state-owned land directly underlying the fill or structures, which easement shall, at the request of the owner, be renewed for a term of 30 years upon such reasonable terms and conditions and for such

reasonable consideration as the director [of the Bureau of Public Lands] may determine.

Thus, L.D. 611 amends that portion of the Act which granted a 30-year easement to owners of structures actually upon submerged and intertidal land on the effective date of the Act, 12 M.R.S.A. § 558(3). Generally, this grant permits the owner to use such a structure as it was used on the effective date of the Act provided the owner does not substantially change the nature of the structure. Opinion of the Attorney General, 80-161 (December 23, 1980).

L.D. 611 would grant to the owner of a structure the right to renew such easement, at the request of the owner, "for a term of 30 years upon such reasonable terms and conditions and for such reasonable consideration as the director [of the Bureau of Public Lands] may determine."^{1/} The bill would produce certain other results which may well be based on a misunderstanding of current law and thus not consciously sought by its drafters. These include: (1) the grant of an additional four years on the original 30-year easement by moving the year of commencement of such easement from 1975

^{1/} L.D. 611 also purports to extend the grant of the 30-year easement in the original Act and any rights granted by L.D. 611 to "filled land." The Emergency Preamble to L.D. 611 states: "The purpose of the [Act] is unclear concerning . . . its applicability to lands already filled." The present Act grants an easement to the owners of "structures actually upon submerged and intertidal lands . . ." 12 M.R.S.A. § 558(3). It is our opinion that filled land falls within the term "structures" as that word is now used in the Act. The Legislature's use of the word "structure" in the original Act would appear to have been intended to cover the wide variety of structures on submerged land, be they wooden, steel, cement or fill. See Opinion of the Attorney General, 80-161 (December 23, 1980); see also Black's Law Dictionary [5th ed.], p. 1276 (defining structure as: "Any construction, or any production or piece of work artificially built up or composed of parts joined together in some definite manner."). No intent to exclude any type of structure, filled or otherwise, is present in the original Act or its legislative history. Therefore, we believe the term "structures" already includes filled land.

to 1979;^{2/} (2) the grant of easement rights to any additional structures placed on submerged or intertidal lands between 1975 and 1979;^{3/} (3) the grant to use structures on submerged or intertidal lands in the manner they were used in 1979 rather than 1975;^{4/} and (4) the grant to use structures on submerged or intertidal lands as they stood in 1979 rather than 1975.^{5/} As with the granting of the right to a 30-year renewal, there is a question of whether these other grants may be the subject of emergency legislation under art. IV, pt. 3, § 16 of the Maine Constitution. However, in view of our conclusion with respect to the 30-year renewal, we need not reach this question.

2/ L.D. 611 proceeds from the assumption that "Public Law 1979, chapter 545, section 2, granted to owners of all structures upon submerged and intertidal lands on the effective date of that Act a constructive easement for a term of 30 years." Emergency Preamble to L.D. 611. This assumption effectively extends the period of the original easement by an additional four years, by commencing the term of the 30-year constructive easement in 1979 rather than 1975. The Submerged Lands Act, c. 287; P.L. 1979, c. 546 merely rearranged the statute by changing the citation of that Act from 12 M.R.S.A. § 514-A to 12 M.R.S.A. § 558. A mere rearrangement of a statute, or sections thereof, does not change the meaning, operation or effect of the statute, unless an intention to do so is clear. Cram v. Inhabitants of County of Cumberland, 148 Me. 515, 521-22 (1953); see 82 C.J.S. § 276(c). The Statement of Facts in the bill, resulting in P.L. 1979, c. 545, indicated it was a recodification that made no major changes in duties or powers, and was to clarify minor administrative inconsistencies. Statement of Facts to L.D. 1498 (1979), H-671 (1979), S-344 (1979) and S-351 (1979). Moreover, as a general proposition, all rights to ownership remain in the State unless the State Legislature conveys such right or grant. Boothbay Harbor Condominiums, Inc. v. Department of Transportation, 382 A.2d 848, 855 (Me. 1978); see Opinion of the Attorney General, 80-117 (July 16, 1980). In view of the absence of an express intent to provide the owners with an additional four years, from 1975 to 1979, of an easement, we conclude that P.L. 1979, c. 545, did not do so. Any easement rights now existing must be traced to P.L. 1975, c. 287. If enacted, L.D. 611 would grant easements to owners of structures actually upon submerged and intertidal lands on September 14, 1979.

3/ We have not attempted to determine how many, if any, structures were erected during the four-year period.

4/ See Opinion of the Attorney General 80-161 (December 23, 1980).

5/ Id.

The relevant provision of the Constitution specifies the effective dates for enacted legislation and the conditions under which emergency legislation, effective immediately, may be enacted. That provision reads as follows:

"An emergency bill shall include only such measures as are immediately necessary for the preservation of the public peace, health or safety; and shall not include . . . (3) provision for the sale or purchase or renting for more than five years of real estate." Maine Const., Art. IV, Pt. 3, § 16.

Section 16 of art. IV, pt. 3 of the Maine Constitution was a part of the same constitutional resolve which enacted the rights of referendum and initiative. 1907 Resolves of Maine, c. 121.^{6/} The parallel between the 90-day delay contained in § 16 and the 90-day filing requirement in art. IV, pt. 3, § 17^{7/} strongly indicates that the primary purpose of the effective date provision was to allow the electorate an adequate opportunity to exercise the right of referendum, and the transfer of the effective date provision from the statute to the constitution is additional evidence of the intent to safeguard the referendum process. The legislative debate on this resolve makes it clear that the purpose of the 90-day period was to allow referendum petitions to be filed before the referred law went into effect. 1907 Me. Leg. Rec. 640-645. This connection has also been noted by several other authorities. See L. Pelletier, "Initiative and Referendum in Maine," 1951 Bowdoin Coll. Bull. 7, 12, 16; Galbreath, "Provisions for State Wide Initiative and Referendum," 43 Annals of the American Academy of Political and Social Science, 81, 101-02 (1912).

6/ Effective dates of legislation prior to the enactment of § 16 were governed by statute, see, e.g., 1903 Me. Rev. Stat., ch. 1, § 5, and the specific statute in effect at the time provided for an effective date only 30 days after the recess of the enacting Legislature, unless another date was stated in the particular bill. The drafters of § 16 evidently wanted to take the power to establish effective dates out of the hands of the Legislature in order to safeguard the referendum process. The result is that § 16 severely limits the authority of the Legislature to make legislation effective prior to 90 days after adjournment.

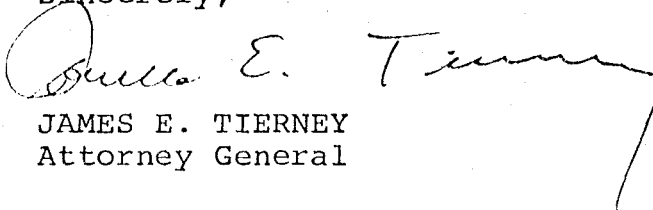
7/ Section 17 mandates that referendum petitions be filed "by the hour of five o'clock, p.m., on the ninetieth day after the recess of the Legislature [which passed the bill]"

The question thus becomes whether L.D. 611 authorizes such a conveyance of real estate as cannot be approved by emergency legislation. The grant to the owners of the renewal right to rent from the State submerged and intertidal lands for a term of 30 years falls squarely within the coverage of the constitutional provision prohibiting the enactment by emergency legislation of laws providing for the rental of real estate for more than five years. In light of the principle of law that such a renewal right is considered to be a present demise of the right to lease land, Hopkins v. McCarthy, 121 Me. 27, 28-29 (1921); Hooper's Sons v. Sterling-Cox Shoe Co., 118 Me. 404, 406-07 (1919); Perry v. Rockland & Rockport Lime Co., 94 Me. 329, 335 (1900), it cannot be argued that this grant does not constitute a present grant of real estate. Accordingly, we conclude that L.D. 611 cannot be enacted as emergency legislation.

We are aware that the original Submerged Lands Act was enacted by emergency legislation. P.L. 1975, c. 287. Although we have not been requested to examine this legislation, we think it necessary to point out that our analysis inevitably leads to the conclusion that P.L. 1975, c. 287 could not have been enacted as emergency legislation. The Act permitted the Director of the Bureau of Public Lands to lease submerged and intertidal land, and granted the original 30-year easements on such land. These clearly fall within the conveyancing provisions of art. IV, pt. 3, § 16. The enactment of the Act as emergency legislation invalidates only the emergency clause. The Act itself is effective and valid but took effect 90 days after the recess of the Legislature thus becoming a non-emergency act. Lemaire v. Crockett, 116 Me. 263, 268 (1917); see also W. S. Libbey Co. v. Johnson, 148 Me. 410, 413-14 (1953). Thus, the Submerged Lands Act was effective on October 1, 1975, rather than May 19, 1975.

It is our opinion, therefore, that L.D. 611 cannot be enacted as emergency legislation because of the grant of the right to rent State land for 30 years. I hope this information is helpful, and please do not hesitate to contact this office should you have further questions.

Sincerely,


JAMES E. TIERNEY
Attorney General

JET/ec
cc: Members, Judiciary Committee
Hon. Charlotte Sewall