

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1500

H. P. 1212

House of Representatives, March 27, 1979

On Motion of Mr. Hobbins of Saco, referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Hughes of Auburn.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT Concerning Preservation Interests under the Property Laws Pertaining
to Preserving or Restoring Historic Property.

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

33 MRSA c. 29 is enacted to read:

CHAPTER 29

PRESERVATION INTEREST

§ 1551. Definitions

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

1. **Historic property.** "Historic property" shall mean a structure, a plot of land which was the setting of an event or any combination of land and buildings, including the surrounding air space, which has a special historical, architectural or archaeological interest or value, and which is predominantly in its original, historical or natural conditions.

2. **Preservation agreement.** "Preservation agreement" shall mean any deed, will or other instrument executed by or on behalf of the owner of historic property, or an order of taking, which includes within it the terms of a preservation interest.

3. **Preservation interest.** “Preservation interest” shall mean a right created by a preservation agreement which may be in the form of a restriction, easement, covenant or condition which is held by a qualified holder and which pertains to preserving or restoring historic property.

4. **Qualified holder.** “Qualified holder” shall mean a nonprofit preservation or historical organization whose purposes include preservation of historic property or a governmental body. The holder shall have the power to acquire interests in property.

§ 1552. Preservation interests authorized; enforcement; release

A preservation interest is the right of a qualified holder to control the treatment of historic property so that its historical integrity is preserved. The preservation interest entitles representatives of a qualified holder to enter the property in a reasonable manner and at reasonable times to assure compliance.

The preservation interest may be enforced by injunction or other proceeding at law or in equity. No preservation interest may be unenforceable on account of lack of privity of estate or contract or lack of benefit to particular land or on account of being assignable or being assigned to any other qualified holder.

A preservation interest may be released in whole or in part by the qualified holder for such consideration, if any, as the holder may determine, in the same manner as the holder may dispose of any interests in property, subject to the conditions of the preservation agreement.

§ 1553. Scope of preservation interest

A preservation interest may forbid, limit or require any or all of the following acts which affect the historic property’s special character or special historical, architectural or archaeological value:

1. **Exterior alterations.** Exterior alterations of an historic property, including, but not limited to, maintenance, placement, removal or decoration;

2. **Interior alterations.** Interior alterations of an historic property, including, but not limited to, maintenance, renovation, construction or decoration;

3. **Demolition and additions.** Demolition of historic property, construction or placing of new buildings, additions, roads, signs, billboards or other advertising, utility poles or other structures, under, on or above the ground;

4. **Landscaping.** Alteration, removal or destruction of trees, shrubs or other vegetation; or fixtures, including, but not limited to, ornamental ironwork, walls, walks, hitching posts and fences; or artifacts, including, but not limited to, historic or prehistoric relics, pottery or shards of pottery, tools, bottles or evidence of structural foundations;

5. **Landfill.** Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials; and

6. Other acts. Any other acts detrimental to the preservation of historic property.

§ 1554. Recordation

So that the title to the historic property affected reflects any preservation interest, all preservation agreements shall be recorded and indexed in the registry of deeds for the county where the property is located in the manner of conveyances of interests in property. The preservation agreement shall describe the property subject to the preservation interest by adequate legal description or by reference to a recorded plan showing the subject property's boundaries.

§ 1555. Limitation

This chapter shall not be construed to imply that any restriction, easement, covenant or condition which does not have the benefit of this chapter shall be unenforceable. Nothing in this chapter shall diminish the powers granted by any general or special law to any governmental body to acquire by purchase, gift or eminent domain or otherwise property for public purposes.

STATEMENT OF FACT

Enactment of this bill would modify common law requirements for easements and covenants only as they pertain to historic preservation. A preservation interest is voluntarily entered into by the owner of an historic property. The details are set out in a preservation agreement which would place limitations or obligations over how an historic site or structure should be treated in order to preserve its historical integrity. The right to enforce these limitations would be in the hands of either an historic preservation organization or a governmental body, such as a local conservation commission. The organization or governmental body would become the owners of a "preservation interest" and the property owner who gave or sold the interest would continue to own and occupy the site or structure. The agreement may be embodied in a deed, a will or a contract. The preservation interest may be in the form of an easement, covenant, condition or restriction. The agreement may forbid certain activities, boarding up of windows, stripping of ornamental wood, etc., or it may require certain duties, structural maintenance, clipping of shrubs to a certain height, etc. The initial agreement is always voluntary. Any subsequent property owner would have notice of the nature of the restriction because all preservation agreements shall be recorded and indexed in the registry of deeds. The law would have the incidental benefit of helping to prevent deterioration of older properties thus aiding in the maintenance of a stable tax base.