

MAINE STATE LEGISLATURE

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(EMERGENCY)
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 611

S. P. 224

In Senate, February 4, 1981

On Motion of Senator Collins of Knox, referred to the Committee on
Judiciary. Sent down for concurrence and ordered printed.

MAY M. ROSS, Secretary of the Senate

Presented by Senator C. Sewall of Lincoln.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Clarify the Status of Certain Real Estate Easements in the State.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, Public Law 1979, chapter 545, section 2, granted owners of all structures actually upon submerged and intertidal lands on the effective date of that Act a constructive easement for a term of 30 years; and

Whereas, the purpose of the statute is unclear concerning the kind of easement granted, its applicability to lands already filled and the right of renewal of such easements; and

Whereas such uncertainty hinders the use, development, financing and proper government administration of filled, submerged and intertidal lands over which the State has asserted jurisdiction; and

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

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

12 MRSA § 558, sub-§ 3, last sentence, as enacted by PL 1979, c. 545, § 2, is repealed and the following enacted in its place:

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 may determine.

Emergency clause; retroactive application. In view of the emergency cited in the preamble, this Act shall take effect when approved and shall be retroactive to September 14, 1979.

STATEMENT OF FACT

Public Law 1979, chapter 545, section 2 permitted the Director of Public Lands to lease submerged and intertidal lands under his jurisdiction and granted a constructive easement for a term of 30 years for owners of structures actually upon submerged and intertidal lands on the effective date of this bill. The statute as enacted is unclear whether lands lawfully filled in the past are covered by constructive easements. In addition, the purposes for which the easements may be used are ambiguous in the context of the statute, and it grants no right of renewal, which hinders the use, financing and development of property that has a useful life in excess of 30 years. This bill is necessary to clarify these ambiguities as they relate to renewals and to structures and filled land already in existence on the effective date of this bill.