

MAINE STATE LEGISLATURE

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EMERGENCY
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 731

H. P. 697 House of Representatives, February 10, 1981
Approved for introduction by a Majority of the Legislative Council pursuant
to Joint Rule 27.

Reference to the Committee on Judiciary suggested.

EDWIN H. PERT, Clerk

Presented by Representative Hobbins of Saco.

Cosponsor: Senator Collins of Knox.

STATE OF MAINE

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

**RESOLVE, Concerning the Authority of the Attorney General to Seek
Adjudication of the Nature and Scope of Cutting Rights Claimed by Private
Parties on Public Lots of the State of Maine.**

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

Whereas, Great Northern Nekoosa Corporation, International Paper Company,
Prentiss & Carlisle Company, Inc., and other private parties who are successors-
in-interest to the original grantees of cutting rights granted by the State of Maine
between 1850 and 1875, for the cutting of timber and grass on public reserved
lands, the so-called "public lots," brought suit to adjudicate the nature and scope
of such cutting rights; and

Whereas, the State subsequently became a party to such suit and, through the
Attorney General, affirmatively sought adjudication, by way of counterclaims, of
the same issues presented for determination by the private parties; and

Whereas, on appeal from a decision of the Superior Court in favor of the private
parties, the Supreme Judicial Court, in **Cushing v. Cohen**, Me., 420 A.2d 919 (1980),

sua sponte, raised questions as to the applicability of the doctrine of sovereign immunity to the lawsuit without reaching the merits of the appeal; and

Whereas, it is the judgment of the Legislature that the doctrine of sovereign immunity is inapplicable to the adjudication of the 2 issues presented to the court for determination; and

Whereas, it is the further judgment of the Legislature that it is in the interest of the State to obtain a final adjudication of the merits of those issues, even if sovereign immunity were applicable; 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

Consent of Legislature. Resolved: That to the extent that consent of the Legislature is necessary for the Attorney General to seek a final adjudication of the issues presented by the State for determination in **Cushing v. Cohen**, Law Court Docket No. Ken. 81-31, such consent is hereby granted. The Attorney General, on behalf of the State of Maine, is authorized to proceed, in his discretion, with such suit, and all prior involvement of the State in the proceedings, both in the Superior Court, Kennebec County, Civil Action Docket No. 1740-73, and in the Law Court, Docket Nos. Ken. 79-31 and 81-31, is hereby confirmed and ratified.

Emergency clause. In view of the emergency cited in the preamble, this resolve shall take effect when approved.

STATEMENT OF FACT

The purpose of this resolve is to express the judgment of the Legislature that the doctrine of sovereign immunity is inapplicable to the adjudication of the issues framed by the State for determination in **Cushing v. Cohen**, Law Court Docket No. Ken. 81-31, but, nevertheless, to grant consent to the Attorney General to proceed to a final adjudication of the suit to the extent such consent may be necessary.