

MAINE STATE LEGISLATURE

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(EMERGENCY)
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1061

S. P. 362

In Senate, February 27, 1981

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 Titles 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, uncertainty exists concerning the location, ownership and alienability of coastal lands that were or may have been created in the past by filling submerged or intertidal lands; and

Whereas, such uncertainty is hindering the use, development and proper government administration of coastal property and threatens to involve the State, municipalities and private citizens in litigation; 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 § 559 is enacted to read:

§ 559. Filled lands that once were or may have been submerged or intertidal lands

1. Legislative findings and policy. The Legislature finds that throughout the

state's history various lands that once were or once may have been submerged or intertidal lands have been filled so as now to be indistinguishable in appearance and use from the uplands beyond the high water mark. These lands were filled prior to the requirement of permits under sections 4701 to 4709, as replaced by Title 38, sections 471 to 478, and have been sold, leased, taxed and otherwise treated in good faith by the State, municipalities and private citizens as owned in fee by private citizens. The recent increase in public awareness of the public trust in all public lands of the State has caused uncertainty concerning the location, ownership and alienability of coastal lands that were or may have been created in the past by filling submerged or intertidal lands. This uncertainty hinders the use, development and proper governmental administration of coastal property and threatens to involve the State, municipalities and private parties in frequent and complicated litigation. The process of locating these lands and asserting any claims by the State would consume inestimable time and expense for the State and private citizens, many of whom have purchased property without knowledge of the filled lands. These lands, having been filled, are presently valueless for purposes of the public trust in submerged and intertidal lands. The public benefit will therefore be promoted by clarifying the status of real estate titles to such lands by declaring such lands free of the public trust. Such a declaration will not impair the public trust in or the power of the Legislature to administer submerged and intertidal lands remaining throughout the State and beyond such filled lands, which presently existing submerged and intertidal lands are still physically useable for trust purposes and in which the public interest is paramount.

2. Declaration of clear title. Title to properties and lands that once were or may have been submerged or intertidal lands, but have been filled as of September 14, 1979, are declared and conveyed to the owners of record of any lands by the State free of any claimed public trust to the extent the areas of these properties and lands are not subject to tidal action. This section shall not be construed to affect any obligations, rights or liabilities created by the operation of sections 4701 to 4709 as later replaced by Title 38, sections 471 to 478, or by permits issued thereunder.

Emergency clause. 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

The need for and purpose of this bill is described in the legislative findings and policy statement in section 1.