

MAINE STATE LEGISLATURE

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L.D. 1594

STATE OF MAINE
HOUSE OF REPRESENTATIVES
110TH LEGISLATURE
FIRST REGULAR SESSION

(Filing No. H-573)

HOUSE AMENDMENT "A" to S.P. 598, L.D. 1594, Bill, "AN ACT
to Clarify the Status of Certain Real Estate Titles in the State."

Amend the bill by striking out everything after the enacting
clause and inserting in its place the following:

'12 MRSA § 559 is enacted to read:

§559. Filled-in submerged lands

1. Legislative intent, purpose. The Legislature finds
that the ownership of certain areas along Maine's coast and great
ponds is uncertain because portions of the submerged and intertidal
lands have been filled-in so as now not to be subject to tidal
action or below water. Such lands were filled prior to the
enactment of _____ > Public Law 1975, Chapter 287,
as reallocated by Public Law 1979, Chapter 545. It appears that prior
to the enactment of the Submerged Lands Act, and to some degree
afterwards, these filled-in portions of the submerged or intertidal
lands have been sold, leased, taxed, and otherwise treated in good
faith by municipalities and private citizens as if such were owned
in fee by private parties. Due to the lack of readily available
documentation of the natural low and high watermarks in most areas
along the coast and great ponds, the process of setting the boundaries
between submerged or intertidal lands and the upland would consume
enormous time and expense for the State and the private parties.

The Legislature recognizes that the submerged lands are owned by the State for the benefit of the public. These lands are impressed with a public trust. This ownership and public trust is derived from the Massachusetts Colonial Ordinance of 1641-1647. As a result of this, submerged land is not, like ordinary private land, held in fee simply absolute but is impressed with the public trust which gives the public's representatives an interest and responsibility in its development.

The Legislature finds that those portions of the submerged and intertidal lands which have been filled in prior to October 1, 1975, the date the Submerged Lands Act was enacted, are substantially valueless for trust uses, and such lands can be disposed of without impairment of the public trust in what remains. The public benefit will be promoted by clarifying the status of real estate titles to such filled lands, thereby permitting full use and development.

2. Definitions. As used in this section unless the context otherwise indicates the following terms have the following meanings.

A. "Filled land" means portions of the submerged and intertidal lands which have been rendered by the acts of man, to be no longer subject to tidal action or below the natural low watermark, as of October 1, 1975.

B. "Intertidal land" means all land affected by the tides between the natural high watermark and either 100 rods seaward therefrom or the natural low watermark, whichever is closer to the natural high watermark.

C. "Person" means individuals, partnerships, corporations and other private legal entities but does not include the State and its political or governmental subdivisions or the Federal Government.

D. "Submerged land" means all land affected by the tides seaward of the natural low watermark or 100 rods from the natural high watermark, whichever is closer to natural high watermark, and all land below natural low watermark under great ponds.

3. Declaration of clear title. Titles to properties and lands that once were or may have been submerged or intertidal lands subject to the state's ownership in public trust that have been filled as of October 1, 1975, are hereby declared and released to the owners of any such filled lands by the State free of any claimed ownership in public trust to the extent the areas of these properties and lands were not submerged or intertidal lands on that date.

4. Confirmation. Any person may seek confirmation from the Bureau of Public Lands that particular land is filled land and receive a declaration that may be filed in the appropriate registry of deeds. Such application for confirmation shall be filed on a form prescribed by the Bureau of Public Lands which shall contain the following information:

- A. Name and address of applicant;
- B. ~~4~~ [>] An accurate legal description ^{proof} of the filled land, that such land was filled as of October 1, 1975, and sufficient details, such as a survey by a registered land surveyor, to locate such filled land on a map of general acceptability;
- C. The area of acreage of the filled land;
- D. The date acquired;
- E. Other information necessary for the purposes of this section.

A filing fee of \$50 shall accompany each application to cover administrative costs.

5. Filing. The following provisions apply to filing.

- A. The application may be filed with the Bureau of Public Lands at any time.
- B. If the applicant demonstrates that the land is filled land as defined in subsection 2, paragraph A, the Director of the Bureau of Public Lands shall issue a declaration to the effect. The director shall respond to the application within 30 days of the date the application is received by the director.

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6. Operation of this Act. This Act shall not create a cause of action on behalf of any person against the State for damages or otherwise arising out of State ownership of lands prior to the effective date of this Act. This Act shall not be construed either to convey or release rights or interest acquired by the State in filled lands by gift, purchase or the power of eminent domain or to effect any obligations, rights or liabilities created by operation of sections 4701 to 4709 as later replaced by Title 38, sections 471 to 478 by permits issued thereunder. This Act shall be retroactive to October 1, 1975.

Termination.

7. Any leases entered into by the Director of the Bureau of Public Lands, pursuant to section 558, for filled land, as defined in subsection 2, paragraph A, are hereby terminated. Lessees shall not be reimbursed for rental paid under such leases.

Statement of Fact

This amendment intends to present a plan for the release by the State of certain filled-in portions of submerged and intertidal lands. The amendment recognizes that the submerged lands are impressed with the public trust, and then goes on to indicate that those portions filled in are no longer of value as public trust lands. It also provides for a declaration from the Bureau of Public Lands that the land is filled prior to October 1, 1975 which may be filed in the appropriate Registry of Deeds.

Filed by Ms. Benoit of South Portland.
Reproduced and distributed under the direction of the Clerk
of the House.

6/11/81

(Filing No. H-573)