

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 551

6
7 S.P. 201

In Senate, February 13, 1985

8 On motion of Senator Violette of Aroostook, referred to the Committee
9 on Judiciary. Sent down for concurrence and ordered printed.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Trafton of Androscoggin.

11 Cosponsored by Senator Kany of Kennebec and Representative Higgins
of Portland.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FIVE
16

17 AN ACT to Adopt the Uniform Conservation
18 Easement Act.
19

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

22 Sec. 1. 33 MRSA §667, as enacted by PL 1969, c.
23 566, §1, is repealed.

24 Sec. 2. 33 MRSA §668, as amended by PL 1983, c.
25 458, §13, is repealed.

26 Sec. 3. 33 MRSA c. 7, sub-c. VIII-A is enacted
27 to read:

28 SUBCHAPTER VIII-A

29 CONSERVATION EASEMENTS

1 §476. Definitions

2 As used in this subchapter, unless the context
3 indicates otherwise, the following terms have the
4 following meanings.

5 1. Conservation easement. "Conservation ease-
6 ment" means a nonpossessory interest of a holder in
7 real property imposing limitations or affirmative ob-
8 ligations the purposes of which include retaining or
9 protecting natural, scenic or open space values of
10 real property, assuring its availability for agricul-
11 tural, forest, recreational or open space use, pro-
12 tecting natural resources, maintaining or enhancing
13 air or water quality or preserving the historical,
14 architectural, archaeological or cultural aspects of
15 real property.

16 2. Holder. "Holder" means:

17 A. A governmental body empowered to hold an in-
18 terest in real property under the laws of this
19 State or the United States; or

20 B. A charitable corporation, charitable associa-
21 tion or charitable trust, the purposes or powers
22 of which include retaining or protecting the nat-
23 ural, scenic or open space values of real proper-
24 ty, assuring the availability of real property
25 for agricultural, forest, recreational or open
26 space use, protecting natural resources, main-
27 taining or enhancing air or water quality or pre-
28 servicing the historical, architectural, archaeo-
29 logical or cultural aspects of real property.

30 3. Third-party right of enforcement. "Third-
31 party right of enforcement" means a right provided in
32 a conservation easement to enforce any of its terms
33 granted to a governmental body, charitable corpora-
34 tion, charitable association or charitable trust,
35 which, although eligible to be a holder, is not a
36 holder.

37 §477. Creation, conveyance, acceptance and duration

38 1. Conservation easement. Except as otherwise
39 provided in this subchapter, a conservation easement

1 may be created, conveyed, recorded, assigned, re-
2 leased, modified, terminated or otherwise altered or
3 affected in the same manner as other easements.

4 2. Right or duty. No right or duty in favor of
5 or against a holder and no right in favor of a person
6 having a 3rd-party right of enforcement arises under
7 a conservation easement before its acceptance by the
8 holder and a recordation of the acceptance.

9 3. Limitation. Except as provided in section
10 478, subsection 2, a conservation easement is unlim-
11 ited in duration unless the instrument creating it
12 otherwise provides.

13 4. Interest. An interest in real property in ex-
14 istence at the time a conservation easement is cre-
15 ated is not impaired by it unless the owner of the
16 interest is a party to the conservation easement or
17 consents to it.

18 5. Entitled to enter land. Unless the instrument
19 creating it provides otherwise, representatives of
20 the holder of a conservation easement shall be enti-
21 tled to enter the land in a reasonable manner and at
22 reasonable times to assure compliance.

23 §478. Judicial actions

24 1. Action. An action affecting a conservation
25 easement may be brought by:

26 A. An owner of an interest in the real property
27 burdened by the easement;

28 B. A holder of the easement;

29 C. A person having a 3rd-party right of enforce-
30 ment; or

31 D. A person authorized by other law.

32 2. Power of court not affected. This subchapter
33 does not affect the power of a court to enforce a
34 conservation easement by injunction or proceeding in
35 equity or to modify or terminate a conservation ease-
36 ment in accordance with principles of law and equity.

1 §479. Validity

2 A conservation easement is valid even though:

3 1. Not appurtenant to interest in real property.
4 It is not appurtenant to an interest in real proper-
5 ty;

6 2. Assigned to another holder. It can be or has
7 been assigned to another holder;

8 3. Not recognized at common law. It is not of a
9 character that has been recognized traditionally at
10 common law;

11 4. Negative burden. It imposes a negative bur-
12 den;

13 5. Affirmative obligations. It imposes affirma-
14 tive obligations upon the owner of an interest in the
15 burdened property or upon the holder;

16 6. Benefit does not touch or concern real prop-
17 erty. The benefit does not touch or concern real
18 property; or

19 7. No privity of estate or of contract. There is
20 no privity of estate or of contract.

21 §479-A. Applicability

22 1. Interest created after effective date. This
23 subchapter applies to any interest created after its
24 effective date which complies with this subchapter,
25 whether designated as a conservation easement or as a
26 covenant, equitable servitude, restriction, easement
27 or otherwise.

28 2. Interest created before effective date. This
29 subchapter applies to any interest created before its
30 effective date if it would have been enforceable had
31 it been created after its effective date, unless ret-
32 roactive application contravenes the Constitution of
33 Maine or laws of this State or the United States.

34 3. Subchapter does not invalidate interest. This
35 subchapter does not invalidate any interest, whether

1 designated as a conservation or preservation easement
2 or as a covenant, equitable servitude, restriction,
3 easement or otherwise, that is enforceable under oth-
4 er law of this State.

5 §479-B. Uniformity of application and construction

6 This subchapter shall be applied and construed to
7 effectuate its general purpose to make uniform the
8 laws with respect to the subject of the subchapter
9 among states enacting it.

10

STATEMENT OF FACT

11 The purpose of this bill is to adopt the Uniform
12 Conservation Easement Act.

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