

# MAINE STATE LEGISLATURE

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1 (New Draft of S.P. 201, L.D. 551)  
2 FIRST REGULAR SESSION  
3

4 ONE HUNDRED AND TWELFTH LEGISLATURE  
5

6 Legislative Document

No. 1640

7  
8 S.P. 626

In Senate, June 4, 1985

9 Reported by Majority Report from the Committee on Judiciary and  
10 printed under Joint Rule 2. Original bill sponsored by Senator Trafton of  
11 Androscoggin. Cosponsored by Senator Kany of Kennebec and Representative  
Higgins of Portland.

JOY J. O'BRIEN, Secretary of the Senate

12  
13 STATE OF MAINE  
14

15 IN THE YEAR OF OUR LORD  
16 NINETEEN HUNDRED AND EIGHTY-FIVE  
17

18 AN ACT to Adopt the Uniform Conservation  
19 Easement Act.  
20

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

23 Sec. 1. 33 MRSA §667, as enacted by PL 1969, c.  
24 566, §1, is repealed.

25 Sec. 2. 33 MRSA §668, as amended by PL 1983, c.  
26 458, §13, is repealed.

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

29 SUBCHAPTER VIII-A

30 CONSERVATION EASEMENTS

31 §476. Definitions

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

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

13           2. Holder. "Holder" means:

14           A. A governmental body empowered to hold an in-  
15 terest in real property under the laws of this  
16 State or the United States; or

17           B. A nonprofit corporation or charitable trust,  
18 the purposes or powers of which include retaining  
19 or protecting the natural, scenic or open space  
20 values of real property; assuring the availabili-  
21 ty of real property for agricultural, forest,  
22 recreational or open space use; protecting natu-  
23 ral resources; or maintaining or enhancing air or  
24 water quality or preserving the historical, ar-  
25 chitectural, archaeological or cultural aspects  
26 of real property.

27           3. Real property. "Real property" includes sur-  
28 face waters.

29           4. Third-party right of enforcement. "Third-  
30 party right of enforcement" means a right provided in  
31 a conservation easement to enforce any of its terms  
32 granted to a governmental body, nonprofit corporation  
33 or charitable trust, which, although eligible to be a  
34 holder, is not a holder.

35           §477. Creation, conveyance, acceptance and duration

36           1. Conservation easement. Except as otherwise  
37 provided in this subchapter, a conservation easement  
38 may be created, conveyed, recorded, assigned, re-  
39 leased, modified, terminated or otherwise altered or

1 affected in the same manner as other easements cre-  
2 ated by written instrument.

3 2. Right or duty. No right or duty in favor of  
4 or against a holder arises under a conservation ease-  
5 ment unless it is accepted by the holder and no right  
6 in favor of a person having a 3rd-party right of en-  
7 forcement arises under a conservation easement unless  
8 it is accepted by any person having a 3rd-party right  
9 of enforcement.

10 3. Limitation. Except as provided in this sub-  
11 chapter, a conservation easement is unlimited in du-  
12 ration unless:

13 A. The instrument creating it otherwise pro-  
14 vides; or

15 B. Change of circumstances renders the easement  
16 no longer in the public interest as determined in  
17 an action under section 478.

18 4. Interest. An interest in real property in ex-  
19 istence at the time a conservation easement is cre-  
20 ated shall not be impaired by it unless the owner of  
21 the interest is a party to the conservation easement  
22 or consents to it.

23 5. Entitled to enter land. The instrument creat-  
24 ing a conservation easement must provide in what man-  
25 ner and at what times representatives of the holder  
26 of a conservation easement or of any person having a  
27 3rd-party right of enforcement shall be entitled to  
28 enter the land to assure compliance.

29 §478. Judicial actions

30 1. Action or intervention. An action affecting  
31 a conservation easement may be brought or intervened  
32 in by:

33 A. An owner of an interest in the real property  
34 burdened by the easement;

35 B. A holder of the easement; or

36 C. A person having a 3rd-party right of enforce-  
37 ment.

1           2. Intervention only. An action affecting a  
2 conservation easement may be intervened in by the  
3 State or a political subdivision of the State in  
4 which the real property burdened by the easement is  
5 located.

6           3. Power of court. This subchapter does not af-  
7 fect the power of a court to enforce a conservation  
8 easement by injunction or proceeding in equity or to  
9 modify or terminate a conservation easement in ac-  
10 cordance with principles of law and equity. A court  
11 may deny equitable enforcement of a conservation  
12 easement when it finds that change of circumstances  
13 has rendered that easement no longer in the public  
14 interest. If the court so finds, the court may allow  
15 damages as the only remedy in an action to enforce  
16 the easement.

17 No comparative economic test may be used to determine  
18 under this subsection if a conservation easement is  
19 in the public interest.

20 §479. Validity

21           A conservation easement is valid even though:

22           1. Not appurtenant to interest in real property.  
23 It is not appurtenant to or does not run with an in-  
24 terest in real property;

25           2. Assigned to another holder. It can be or has  
26 been assigned to another holder;

27           3. Not recognized at common law. It is not of a  
28 character that has been recognized traditionally at  
29 common law;

30           4. Negative burden. It imposes a negative bur-  
31 den;

32           5. Affirmative obligations. It imposes affirma-  
33 tive obligations upon the owner of an interest in the  
34 burdened property or upon the holder;

35           6. Benefit does not touch or concern real prop-  
36 erty. The benefit does not touch or concern real  
37 property;

1           7. No privity of estate or of contract. There is  
2 no privity of estate or of contract; or

3           8. Does not run to successors or assigns. It  
4 does not run to the successor and assigns of the  
5 holder.

6           §479-A. Applicability

7           1. Interest created after effective date. This  
8 subchapter applies to any interest created after its  
9 effective date which complies with this subchapter,  
10 whether designated as a conservation easement or as a  
11 covenant, equitable servitude, restriction, easement  
12 or otherwise.

13           2. Conservation easement created before effec-  
14 tive date. This subchapter applies to any conserva-  
15 tion easement created before the effective date of  
16 this subchapter if the conservation easement would  
17 have been enforceable had it been created after the  
18 effective date of this subchapter, unless retroactive  
19 application contravenes the Constitution of Maine or  
20 the United States Constitution.

21           3. Subchapter does not invalidate interest. This  
22 subchapter does not invalidate any interest, whether  
23 designated as a conservation or preservation easement  
24 or as a covenant, equitable servitude, restriction,  
25 easement or otherwise, that is enforceable under oth-  
26 er laws of this State.

27           §479-B. Uniformity of application and construction

28           This subchapter shall be applied and construed to  
29 effectuate its general purpose to make uniform the  
30 laws with respect to the subject of the subchapter  
31 among states enacting it.

32   STATEMENT OF FACT

33           Section 1 of this new draft repeals the current  
34 provision of the law that defines a conservation re-  
35 striction: As a restriction, easement, covenant or  
36 condition appropriate to retaining land or water ar-  
37 eas in their natural condition by forbidding or lim-

1 iting construction, landfill, destruction of vegeta-  
2 tion, excavation and other acts detrimental to con-  
3 servation.

4 Section 2 repeals the current provision of the  
5 law which prescribes who may hold conservation re-  
6 strictions that are enforceable even if the holder  
7 does not own land benefited by the easement. Cur-  
8 rently, governmental bodies may hold these easements  
9 and nonprofit corporations may hold these easements  
10 provided that the easements are held on a river  
11 shoreline.

12 Section 3 enacted the Uniform Conservation Ease-  
13 ment Act.

14 The Maine Revised Statutes, Title 33, section  
15 476, contains the definitions of the critical terms  
16 used in the Uniform Conservation Easement Act and in  
17 creating conservation easements under the Act. A  
18 "conservation easement" is an interest in real prop-  
19 erty, which may include surface waters capable of  
20 private ownership, created to place limitations or  
21 obligations on the use of the real property so as to  
22 protect natural, scenic, open space and other conser-  
23 vation values. The "holder" of the easement may be a  
24 governmental body or nonprofit entity having the pur-  
25 pose of protecting natural, scenic and other conser-  
26 vation values. The easement may provide for a  
27 "3rd-party right of enforcement," which means a right  
28 in a governmental body or other nonprofit entity to  
29 enforce the terms of the easement.

30 The Maine Revised Statutes, Title 33, section  
31 477, subsection 1, provides that a conservation ease-  
32 ment may be created, conveyed, recorded and otherwise  
33 treated as are other easements created by written in-  
34 strument. Subsection 2 states that a conservation  
35 easement may not create a right or duty of a person  
36 unless that person accepts the right or duty. Sub-  
37 section 3 provides that a conservation easement is of  
38 unlimited duration unless the instrument creating it  
39 provides otherwise or a change of circumstances ren-  
40 ders the easement no longer in the public interest as  
41 determined in a court action. Subsection 4 provides  
42 that an interest in real property cannot be impaired  
43 by a conservation easement unless the owner of the

1 interest is a party to or consents to the easement.  
2 Subsection 5 provides that the instrument creating  
3 the easement must provide what ability, if any, the  
4 holder of the easement or any person given a right to  
5 enforce the easement by the instrument creating it is  
6 to have to enter the land to assure compliance with  
7 the easement.

8 The Maine Revised Statutes, Title 33, section  
9 478, provides that the owner of the property burdened  
10 by the conservation easement, the holder of the ease-  
11 ment or a person having a right to enforce the ease-  
12 ment by the terms of the easement may bring or be a  
13 party to a court action concerning the easement. The  
14 State or a political subdivision of the State may in-  
15 tervene in the action. The court may deny equitable  
16 enforcement of the easement if it finds that change  
17 of circumstances has rendered the easement no longer  
18 in the public interest, except that the "public in-  
19 terest" may not be defined in terms of a higher eco-  
20 nomic value or return for the land.

21 The Maine Revised Statutes, Title 33, section  
22 479, provides, in essence, that a conservation ease-  
23 ment is valid even though the holder of the easement  
24 does not own real property benefited by the easement.

25 The Maine Revised Statutes, Title 33, section  
26 479-A, provides that any easement interest created  
27 after the effective date of the Uniform Conservation  
28 Easement Act shall be subject to the Act if it com-  
29 plies with the Act, regardless of the name given to  
30 the interest created. A conservation easement cre-  
31 ated before the effective date of the Act is subject  
32 to the Act if it would have been enforceable under  
33 the Act if created after its effective date, unless  
34 retroactive application proves unconstitutional. The  
35 Act also does not invalidate interests otherwise en-  
36 forceable under Maine law.

37 The Maine Revised Statutes, Title 33, section  
38 479-B, requires the Act to be applied and construed  
39 so as to be uniform with the acts adopted by other  
40 states.

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