

| (Nev                                    | w Draft of S.P.<br>(New T<br>SECOND REGUL | -   |   |
|---|---|---|---|
| ONE                                     | HUNDRED AND TW                            | ELFTH LEGISLATURE   |   |
| Legislative Docu                        | ment                                      |   | No. 2380                                      |
|   |   | rom the Committee on Ju   |   |
| Cumberland. Cosp                        | oonsored by Senator ake and Representativ | l sponsored by Senator Na<br>Trafton of Androscoggin,<br>ve Wentworth of Wells. | Speaker                                       |
|   | JO,                                       | Y J. O'BRIEN, Secretary   | of the Senate                                 |
| , <u>,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,</u> | STATE OF                                  | MAINE   | <u>, , , , , , , , , , , , , , , , , , , </u> |
| N                                       | IN THE YEAR<br>INETEEN HUNDREI            | OF OUR LORD<br>AND EIGHTY-SIX   |   |
| AN ACT t                                | o Confirm and F<br>Rights in Inte         | Recognize Public T<br>ertidal Land.   | rust  |
| Be it enacte<br>follows:                | d by the People                           | e of the State of :   | Maine as                                      |
| 12 MRSA                                 | c. 202—A is ena                           | acted to read:  |   |
|   | CHAPTER                                   | R 202-A   |   |
| THE                                     | PUBLIC TRUST I                            | N INTERTIDAL LAND   |   |
| <u>sec. 571. L</u>                      | egislative find                           | lings and purpose   |   |
| intertidal 1<br>public trus             | ands of the Sta<br>t and that th          | and declares<br>ate are impressed<br>he State is respon<br>interest in this     | sible for                                     |

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| ٦  | The residence further finds and declares that   |
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| 1<br>2   | The Legislature further finds and declares that<br>this public trust is part of the common law of Maine   |
| 2<br>3   |   |
|  | and generally derived from the practices, conditions  |
| 4  | and needs in Maine, from English Common Law and from  |
| 5  | the Massachusetts Colonial Ordinance of 1641-47. The  |
| 6  | public trust is an evolving doctrine reflective of  |
| 7  | the customs, traditions, heritage and habits of the<br>Maine people. In Maine, the doctrine has diverged  |
| 8  | Maine people. In Maine, the doctrine has diverged   |
| 9  | from the laws of England and Massachusetts. The pub-  |
| 10   | lic trust encompasses those uses of intertidal land   |
| 11   | essential to the health and welfare of the Maine peo-   |
| 12   | ple, which uses include, but are not limited to,  |
| 13   | fishing, fowling, navigation, use as a footway be-  |
| 14   | tween points along the shore and use for recreational   |
| 15   | purposes. These recreational uses are among the most  |
| 16   | important to the Maine people today who use   |
| 17   | intertidal land for relaxation from the pressures of  |
| 18   | modern society and for enjoyment of nature's beauty.  |
| 10   | modeln booletj und for enjoyment of nature b beddejt  |
| 19   | The Legislature further finds and declares that   |
| 20   | the protection of the public uses referred to in this   |
| 21   | chapter is of great public interest and grave concern   |
| 22   | to the State.   |
| 22   | to the state.   |
|  |   |
| 23   | sec. 572. Definitions   |
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| 24   | As used in this chapter, the term "intertidal   |
| 2 <b>4</b><br>25   | As used in this chapter, the term "intertidal land" means all land of this State affected by the  |
| 24<br>25<br>26   | As used in this chapter, the term "intertidal<br>land" means all land of this State affected by the<br>tides between the ordinary high watermark and either   |
| 2 <b>4</b><br>25   | As used in this chapter, the term "intertidal<br>land" means all land of this State affected by the<br>tides between the ordinary high watermark and either<br>100 rods seaward from the high watermark or the ordi-  |
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| 24<br>25<br>26<br>27<br>28<br>29<br>30<br>31                                     | As used in this chapter, the term "intertidal<br>land" means all land of this State affected by the<br>tides between the ordinary high watermark and either<br>100 rods seaward from the high watermark or the ordi-<br>nary low watermark, whichever is closer to the ordi-<br>nary high watermark.<br>sec. 573. Public trust rights in intertidal land  |
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| 24<br>25<br>26<br>27<br>28<br>29<br>30<br>31<br>32<br>33<br>34<br>35<br>36       | As used in this chapter, the term "intertidal<br>land" means all land of this State affected by the<br>tides between the ordinary high watermark and either<br>loo rods seaward from the high watermark or the ordi-<br>nary low watermark, whichever is closer to the ordi-<br>nary high watermark.<br>sec. 573. Public trust rights in intertidal land<br>1. Public trust rights. The public trust rights<br>in intertidal land include the following:<br>A. The right to use intertidal land for fishing,<br>fowling and navigation;<br>B. The right to use intertidal land for recre-<br>ation; and   |

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| 1             | 2. Limitations. The rights described in subsec-  |
|---------------|--|
| 2             | tion 1 do not include:   |
| 3<br>4        | A. The removal from the intertidal land of any sand, soil, rocks or other minerals;                      |
| 5             | B. Interference with any structure, development  |
| 6             | or improvement erected or maintained on  |
| 7             | intertidal land in accordance with the laws of   |
| 8             | this State;  |
| 9<br>10<br>11 | C. The depositing of any refuse or waste on intertidal land or in the water covering intertidal land; or |
| 12            | D. Use or operation of motorized vehicles other  |
| 13            | than navigable watercraft, unless specifically   |
| 14            | authorized by state law or municipal ordinance.  |
| 15            | 3. Police powers. Municipalities shall have ju-  |
| 16            | risdiction to exercise their police powers to control  |
| 17            | public use of intertidal land, except where such ex-   |
| 18            | ercise is superseded by any state law.   |
| 19            | 4. Other public rights. This chapter does not  |
| 20            | affect public rights in intertidal land arising from   |
| 21            | custom, prescription, implied dedication, acquies-   |
| 22            | cence or any other source. This chapter does not af-   |
| 23            | fect public rights in dry sand areas upland from   |
| 24            | intertidal land arising from custom, prescription,   |
| 25            | implied dedication, acquiescence, the public trust   |
| 26            | doctrine or any other source.  |
| 27            | STATEMENT OF FACT  |
| 28<br>29      | This new draft confirms and recognizes the public trust rights in intertidal land.                       |
| 30            | Just 3% of the Maine coastline is in public own-   |
| 31            | ership, the smallest percentage of any state in the  |
| 32            | nation. While most of the coastline is privately   |
| 33            | owned to the low watermark, the common law of Maine,   |
| 34            | which includes the Colonial Ordinances of 1641-47,   |
| 35            | established the public trust rights to use intertidal  |
| 36            | land for various necessary purposes. The public uses   |

1 explicitly enumerated in the Colonial Ordinances were 2 those of greatest importance to the colonial resi-3 dents; but, as the Justices of the Maine Supreme Ju-4 dicial Court have stated:

5 "Navigation, fishing and fowling were the histor-6 ical purposes for which the public trust princi-7 ple was developed in common law. Those public 8 uses of the intertidal and submerged lands remain 9 important, but others have grown up as well. The press of an increasing population has led to 10 11 heavy demands upon the State's great ponds and 12 seacoast for recreational uses."

13 <u>Opinion of the Justices</u>, 437 A.2d 597, 607 (Me. 14 1981).

15 The Legislature has also recognized the preeminent value of the seacoast "as a source of pub-16 lic and private recreation and solace from the pressures of an industrialized society." (Oil Spill 17 18 19 Prevention and Pollution Control Act, the Maine Revised Statutes, Title 38, section 541.) 20

21 Persons unfamiliar with the long-standing Maine 22 tradition of public recreational use of intertidal land — for strolling, bathing, nature study — have 23 24 challenged the public's rights. The conflict between private landowners and members of the public assert-25 26 ing their rights to recreational use of intertidal 27 land areas will only increase with the increasing 28 population pressures on the coast.

It is now time to confirm the public trust rights to use intertidal land, just as our ancestors found it wise to confirm the portions of common law of most importance to their day through passage of the Colonial Ordinances.

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