

# MAINE STATE LEGISLATURE

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(EMERGENCY)  
FIRST SPECIAL SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1903

H.P. 1402 House of Representatives, October 7, 1987  
Approved for introduction by a majority of the  
Legislative Council pursuant to Joint Rule 26.  
Received by the Clerk of the House on October 6, 1987.  
Referred to the Committee on Appropriations and Financial  
Affairs and 1,650 ordered printed pursuant to Joint Rule 14.  
EDWIN H. PERT, Clerk  
Presented by Representative WENTWORTH of Wells.  
Cosponsored by Senator ESTES of York, Representatives  
MURPHY of Kennebunk and FARNUM of South Berwick.

STATE OF MAINE

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-SEVEN

1 AN ACT to Make a Supplemental Appropriation  
2 to the Attorney General for the Appeal  
3 of Public Access Cases.  
4

5 Emergency preamble. Whereas, Acts of the Legis-  
6 lature do not become effective until 90 days after  
7 adjournment unless enacted as emergencies; and

8 Whereas, the 112th Legislature enacted "AN ACT to  
9 Confirm and Recognize Public Trust Rights in  
10 Intertidal Land," Public Law 1985, chapter 782, to  
11 confirm the public's rights to use the intertidal  
12 zone for recreational purposes; and

13 Whereas, the Superior Court in the case of Bell  
14 v. Town of Wells, recently found that the Act was un-  
15 constitutional and held that the public had no right

1 to use Moody Beach in the Town of Wells for general  
2 recreational purposes; and

3 Whereas, it is important that the Supreme Judi-  
4 cial Court resolve these legal issues; and

5 Whereas, in the judgment of the Legislature,  
6 these facts create an emergency within the meaning of  
7 the Constitution of Maine and require the following  
8 legislation as immediately necessary for the preser-  
9 vation of the public peace, health and safety; now,  
10 therefore,

11 Be it enacted by the People of the State of Maine as  
12 follows:

13 **Appropriation.** The following funds are appropri-  
14 ated from the General Fund to carry out the purposes  
15 of this Act.

16 1987-88

17 ATTORNEY GENERAL, DEPART-  
18 MENT OF

19 All Other \$30,000

20 Provides fund to  
21 permit the Attor-  
22 ney General to pay  
23 for the cost of  
24 the record on ap-  
25 peal to the Su-  
26 preme Judicial  
27 Court and to pay  
28 any costs that the  
29 plaintiffs are  
30 awarded pursuant  
31 to the Maine Re-  
32 vised Statutes,  
33 Title 14, sections

1 1501, 1502-B,  
2 1502-C and 1502-D,  
3 by the Superior  
4 Court and Maine  
5 Rules of Civil  
6 Procedure, Rules  
7 54 and 54A in the  
8 matter of Bell, et  
9 al v. Town of  
10 Wells, et al.,  
11 C.V. 84-125, York  
12 County.

13 **Emergency clause.** In view of the emergency cited  
14 in the preamble, this Act shall take effect when ap-  
15 proved.

16 STATEMENT OF FACT

17 In the case of Bell, et al v. Town of Wells, et  
18 al, Civil Action Docket No. C.V. 84-125, York County,  
19 the Superior Court of York County ruled that the pub-  
20 lic does not have the right to use Moody Beach for  
21 the purpose of sunbathing and certain other recrea-  
22 tional activities which have historically taken place  
23 on that beach. The decision concludes that under the  
24 Colony Ordinance of 1647, there is no public right to  
25 engage in general recreation in the intertidal zone  
26 although there is a right to engage in certain recre-  
27 ational activities such as walking, fishing, fowling  
28 and beaching boats. The court also held that the  
29 Intertidal Lands Act, Public Law 1985, chapter 782,  
30 was held to be unconstitutional on the basis that it  
31 violated the separation of powers provision of the  
32 Maine Constitution, Article 3, section 2.

33 This decision not only adversely affects the  
34 public's right to use Moody Beach, but it also has  
35 the potential for seriously affecting public rights  
36 in the intertidal zone along all of Maine's coast.  
37 The Superior Court's decision conflicts with the tra-  
38 ditions of the people of Maine, and indeed, takes  
39 from the people of this State their long understood  
40 relationship to our coast. It draws unrealistic dis-  
41 tinctions between activities such as sitting on the

1 shore with a fishing pole, which is allowed, and sit-  
2 ting on the shore without one, which supposedly is  
3 not allowed.

4 The Superior Court's decision should be appealed  
5 to vindicate Maine people's traditional rights. The  
6 purpose of this appropriation is to pay the cost of  
7 the transcript for the record of the Superior Court  
8 trial and other costs relating to filing the record  
9 with the Supreme Judicial Court. This appropriation  
10 will also cover any costs awarded to the plaintiffs  
11 as a prevailing party pursuant to law. This may in-  
12 clude such things as the filing fee, fees for service  
13 of process, the fee and travel costs of witnesses and  
14 the costs of depositions. This appropriation will  
15 not cover attorney's fees for any party.

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