

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 1923

H.P. 1340

House of Representatives, March 17, 1999

An Act to Facilitate the Establishment of Trail Easements.

Reference to the Committee on Agriculture, Conservation and Forestry suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative DUDLEY of Portland.
Cosponsored by Senator DOUGLASS of Androscoggin and
Representatives: BULL of Freeport, ETNIER of Harpswell, LaVERDIERE of Wilton,
NORBERT of Portland, SAVAGE of Buxton, SCHNEIDER of Durham, VOLENIK of
Brooklin, Senator: ABROMSON of Cumberland.

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

2 **Sec. 1. 33 MRSA c. 30** is enacted to read:

4 **CHAPTER 30**

6 **TRAIL EASEMENTS**

8 **§1581. Definitions**

10 As used in this chapter, unless the context otherwise
12 indicates, the following terms have the following meanings.

14 **1. Holder. "Holder" means:**

16 A. A governmental body authorized to hold an interest in
18 real property under the laws of this State or the United
20 States, including a quasi-governmental entity such as a
conservation commission, a regional planning commission or a
water or sewer district; or

22 B. A nonprofit corporation including a land trust, the
24 purposes or powers of which include the creation and
26 maintenance of pedestrian trails for use by the general
public, for the conservation or preservation of open space,
or both.

28 **2. Trail easement. "Trail easement" means a nonpossessory**
30 interest of a holder in real property for the purposes of
32 creating and maintaining a pedestrian trail for use by the
general public.

34 **§1582. Creation, conveyance, acceptance and duration**

36 **1. Trail easement. Except as otherwise provided in this**
38 chapter, a trail easement may be created, conveyed, recorded,
assigned, released, modified, terminated or otherwise altered or
40 affected in the same manner as other easements created by written
instrument.

42 **2. Right or duty. No right or duty in favor of or against**
44 a holder arises under a trail easement unless the right or duty
is accepted by the holder.

46 **3. Limitation. Except as provided in this chapter, a trail**
48 easement is unlimited in duration unless the instrument creating
it provides otherwise.

50 **4. Interest. An interest in real property in existence at**
the time a trail easement is created is not impaired by the trail

2 easement unless the owner of the interest is a party to the trail
3 easement or consents to it.

4 **§1583. Judicial actions**

6 1. Action or intervention. An owner of an interest in the
7 real property burdened by a trail easement or a holder of the
8 trail easement may bring or intervene in an action affecting the
9 easement.

10 2. Intervention only. The State or a political subdivision
11 of the State in which the real property burdened by a trail
12 easement is located may intervene in an action affecting the
13 easement.

14 3. Power of court. This chapter does not affect the power
15 of a court to enforce a trail easement by injunction or
16 proceeding in equity or to modify a trail easement in accordance
17 with principles of law and equity.

18 **§1584. Validity**

19 A trail easement is valid and enforceable even if:

20 1. Not appurtenant to interest in real property. It is not
21 appurtenant to or does not run with an interest in real property;

22 2. Assigned to another holder. It can be or has been
23 assigned to another holder;

24 3. Not recognized at common law. It is not of a character
25 that has been recognized traditionally at common law;

26 4. Negative burden. It imposes a negative burden;

27 5. Affirmative obligations. It imposes affirmative
28 obligations upon the owner of an interest in the burdened
29 property or upon the holder;

30 6. Benefit does not touch or concern real property. The
31 benefit does not touch or concern real property;

32 7. No privity of estate or of contract. There is no
33 privity of estate or of contract; or

34 8. Does not run to successors or assigns. It does not run
35 to the successors or assigns of the holder.

36 **§1585. Interpretation of instrument creating a trail easement**

2 As used in an instrument creating a trail easement delivered
3 after the effective date of this chapter, unless the language of
4 the instrument creating the trail easement indicates otherwise,
5 the following terms have the following meanings.

6 1. Pedestrian. The use of the term "pedestrian," in the
7 context of the uses to which a trail easement may be put, means
8 use by the general public for human-powered activities, including
9 walking, jogging, bicycling, in-line skating and nordic skiing.
10 It does not include motorized vehicles and devices, except for
11 emergency vehicles and wheelchairs and other mobility devices for
12 the handicapped.

13 2. Appurtenant rights. The use of the term "appurtenant
14 rights" means:

15 A. The right to construct, maintain, replace and repair any
16 trail surface, whether paved or unpaved, and any boardwalk,
17 bridge, railing, retaining wall, signage and other similar
18 appurtenance customarily used with pedestrian trails; and

19 B. The right to periodically prune trees and tree limbs, to
20 remove dead, diseased, leaning or fallen trees, to clear
21 undergrowth necessary to keep the trail passable and to make
22 plantings necessary to prevent erosion, all in accordance
23 with good forestry management and landscaping practices,
24 except that the grantee of a trail easement does not have an
25 affirmative obligation to perform the activities described
26 by the term "appurtenant rights" unless expressly stated in
27 the trail easement instrument.

28 **§1586. Applicability**

29 1. Trail easement created after effective date. This
30 chapter applies to any interest created after the effective date
31 of this chapter that meets the definition of trail easement as
32 set forth in section 1581.

33 2. Trail easement created before effective date. This
34 chapter applies to any trail easement created before the
35 effective date of this chapter if the trail easement would have
36 been enforceable had it been created after the effective date of
37 this chapter, unless retroactive application contravenes the
38 Constitution of Maine or the United States Constitution.

39 3. Chapter does not invalidate interest. This chapter does
40 not invalidate any interest, whether designated as a trail
41 easement or otherwise, that is enforceable under other laws of
42 this State.

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SUMMARY

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This bill facilitates the establishment of trail easements by specifying that such easements for the use of the public are valid and enforceable even if they lack some characteristics required of easements under common law. It also defines terms used in instruments creating trail easements and specifies who may bring or intervene in actions affecting a trail easement.

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