

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST SPECIAL SESSION-2005

Legislative Document

No. 1559

S.P. 543

In Senate, April 7, 2005

An Act To Adopt the Uniform Environmental Covenants Act

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator HOBBS of York.
Cosponsored by Representative SHERMAN of Hodgdon and
Representatives: BRYANT of Windham, CARR of Lincoln, GERZOFKY of Brunswick.

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

4 **Sec. 1. 38 MRSA c. 31 is enacted to read:**

6 **CHAPTER 31**

8 **UNIFORM ENVIRONMENTAL COVENANTS ACT**

10 **§3001. Short title**

12 This chapter may be known and cited as the Uniform Environmental Covenants Act.

14 **§3002. Definitions**

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

18 1. Activity and use limitations. "Activity and use limitations" means restrictions or obligations created under this chapter with respect to real property.

22 2. Agency. "Agency" means the department or any legal successor or any other state or federal agency that determines or approves the environmental response project pursuant to which the environmental covenant is created.

24 3. Common interest community. "Common interest community" means a condominium, cooperative or other real property with respect to which a person, by virtue of the person's ownership of a parcel of real property, is obligated to pay property taxes or insurance premiums or for maintenance or improvement of other real property described in a recorded covenant that creates the common interest community.

28 4. Environmental covenant; covenant. "Environmental covenant" or "covenant" means a servitude arising under an environmental response project that imposes activity and use limitations.

30 5. Environmental response project. "Environmental response project" means a plan or work performed for environmental remediation of real property and conducted:

32 A. Under a federal or state program governing environmental remediation of real property, including, but not limited to, remediation under the laws governing uncontrolled hazardous substance sites, pursuant to chapter 13-B; or

2 B. Incident to closure of a solid, special or hazardous
3 waste management unit if the closure is conducted with
4 approval of the department under the laws governing
5 hazardous waste, septage and solid waste management,
6 pursuant to chapter 13.

7 6. Holder. "Holder" means the grantee of an environmental
8 covenant as specified in section 3003, subsection 1.

9 7. Person. "Person" means an individual, corporation,
10 business trust, estate, trust, partnership, limited liability
11 company, association, joint venture, public corporation,
12 government, governmental subdivision, agency, instrumentality or
13 any other legal or commercial entity.

14 8. Record. "Record," the noun, means information that is
15 inscribed on a tangible medium or that is stored in an electronic
16 or other medium and is retrievable in perceivable form.

17 9. State. "State" means a state of the United States, the
18 District of Columbia, Puerto Rico, the United States Virgin
19 Islands or any territory or insular possession subject to the
20 jurisdiction of the United States.

21 §3003. Nature of rights

22 1. Holder. Any person, including a person that owns an
23 interest in the real property, the agency or a municipality or
24 other unit of local government, may be a holder. An environmental
25 covenant may identify more than one holder. The interest of a
26 holder is an interest in real property. When the department is
27 the agency determining or approving the environmental response
28 project pursuant to which an environmental covenant is created,
29 the department shall identify all holders of the environmental
30 covenant and may identify the department as a holder,
31 notwithstanding any other provision of law.

32 2. Right of agency. A right of an agency under this
33 chapter or under an environmental covenant, other than a right as
34 a holder, is not an interest in real property.

35 3. Obligations. An agency is bound by any obligation it
36 assumes in an environmental covenant, but an agency does not
37 assume obligations merely by signing an environmental covenant.
38 Any other person that signs an environmental covenant is bound by
39 the obligations the person assumes in the covenant, but signing
40 the covenant does not change obligations, rights or protections
41 granted or imposed under law other than this chapter except as
42 provided in the covenant.

2 4. Priority of recorded interests. The priority or
4 recorded interests is governed by other law, and is unaffected by
this Act, except as provided in section 3009, subsection 3 for
6 tax liens.

8 5. Signature on record. If the environmental covenant
10 covers commonly owned property in a common interest community,
the record may be signed by any person authorized by the
governing boards of the owners' association.

12 **§3004. Contents of environmental covenant**

14 1. Required contents. An environmental covenant must:

16 A. State that the instrument is an environmental covenant
executed pursuant to this chapter;

18 B. Contain a legally sufficient description of the real
20 property subject to the covenant;

22 C. Describe the activity and use limitations on the real
24 property;

26 D. Identify every holder;

28 E. Be signed by the agency, every holder and unless waived
by the agency, every owner of the fee simple of the real
30 property subject to the covenant; and

32 F. Identify the name and location of any administrative
record for the environmental response project reflected in
34 the environmental covenant.

36 2. Permissible contents. In addition to the information
required by subsection 1, an environmental covenant may contain
38 other information, restrictions and requirements agreed to by the
persons that signed it, including:

40 A. Any requirements for notice following transfer of a
specified interest in the property subject to the covenant,
42 or concerning proposed changes in use of, applications for
building permits for or proposals for any site work
44 affecting any contamination on the property subject to the
covenant;

46 B. Any requirements for periodic reporting describing
48 compliance with the covenant;

2 C. Any rights of access to the property granted in
3 connection with implementation or enforcement of the
4 covenant;

5 D. A brief narrative description of any contamination and
6 its remedy, including the contaminants of concern, the
7 pathways of exposure, limits on exposure and the location
8 and extent of the contamination;

9 E. Any limitation on amendment or termination of the
10 covenant in addition to those contained in sections 3009 and
11 3010; and

12 F. Any rights of the holder in addition to the holder's
13 right to enforce the covenant pursuant to section 3011.

14 3. Additional signatories. In addition to other conditions
15 for its approval of an environmental covenant, the agency may
16 require those persons specified by the agency who have interests
17 in the real property to sign the covenant.

18 **§3005. Validity; effect on other instruments**

19 1. Runs with land. An environmental covenant that complies
20 with this chapter runs with the land.

21 2. Valid and enforceable. An environmental covenant that
22 is otherwise effective is valid and enforceable even if:

23 A. It is not appurtenant to an interest in real property;

24 B. It can be or has been assigned to a person other than
25 the original holder;

26 C. It is not of a character that has been recognized
27 traditionally at common law;

28 D. It imposes a negative burden;

29 E. It imposes an affirmative obligation on a person having
30 an interest in the real property or on the holder;

31 F. The benefit or burden does not touch or concern real
32 property;

33 G. There is no privity of estate or contract;

34 H. The holder dies, ceases to exist, resigns or is
35 replaced; or

2 1. The owner of an interest subject to the environmental
3 covenant and the holder are the same person.

4 3. Instrument recorded prior to effective date of chapter.
5 An instrument that creates restrictions or obligations with
6 respect to real property that would qualify as activity and use
7 limitations except for the fact that the instrument was recorded
8 before the effective date of this chapter is not invalid or
9 unenforceable because of any of the limitations on enforcement of
10 interests described in subsection 2 or because it was identified
11 as an easement, servitude, deed restriction or other interest.
12 This chapter does not apply in any other respect to such an
13 instrument.

14 4. Not invalidate or render unenforceable. This chapter
15 does not invalidate or render unenforceable any interest,
16 condition, declaration, covenant or environmental covenant,
17 regardless of how designated, that is otherwise enforceable under
18 the law of this State, whether created before or after the
19 adoption of this chapter, including, without limitation, those
20 adopted pursuant to section 343-E.

21 §3006. Relationship to other land-use law

22 This chapter does not authorize a use of real property that
23 is otherwise prohibited by zoning, by law other than this chapter
24 regulating use of real property or by a recorded instrument that
25 has priority over the environmental covenant. An environmental
26 covenant may prohibit or restrict uses of real property that are
27 authorized by zoning or by law other than this chapter.

28 §3007. Notice

29 1. Provision of copy. A copy of an environmental covenant
30 must be provided by the persons and in the manner required by the
31 agency to:

32 A. Each person who signed the covenant;

33 B. Each person holding a recorded interest in the real
34 property subject to the covenant;

35 C. Each person in possession of the real property subject
36 to the covenant;

37 D. Each municipality or other unit of local government in
38 which real property subject to the covenant is located; and

39 E. Any other person the agency requires.

40

2 2. Effect of failure to provide copy. The validity of a
3 covenant is not affected by failure to provide a copy of the
4 covenant as required under this section.

6 **§3008. Recording**

8 1. Recording required. An environmental covenant and any
9 amendment or termination of the covenant must be recorded in
10 every county in which any portion of the real property subject to
11 the covenant is located. For purposes of indexing, a holder must
12 be treated as a grantee.

14 2. Subject to laws governing recording priority. Except as
15 otherwise provided in section 3009, subsection 3, an
16 environmental covenant is subject to the laws of this State
17 governing recording and priority of interests in real property.

18 **§3009. Duration; amendment by court action**

20 1. Perpetual duration. An environmental covenant is
21 perpetual unless it is:

22 A. By its terms limited to a specific duration or
23 terminated by the occurrence of a specific event;

24 B. Terminated by consent pursuant to section 3010;

25 C. Terminated pursuant to subsection 2;

26 D. Terminated by operation of other laws of this State
27 governing priority of interests; or

28 E. Terminated or modified in an eminent domain proceeding,
29 but only if:

30 (1) The agency that signed the covenant is a party to
31 the proceeding;

32 (2) All persons identified in section 3010,
33 subsections 1 and 2 are given notice of the pendency of
34 the proceeding; and

35 (3) The court determines, after hearing, that the
36 termination or modification will not adversely affect
37 human health or the environment.

38 2. Intended benefits can no longer be realized. If the
39 agency that signed an environmental covenant has determined that
40 the intended benefits of the covenant can no longer be realized,
41 a court, under the doctrine of changed circumstances, in an
42 action for specific performance, may terminate the covenant.

2 action in which all persons identified in section 3010,
3 subsections 1 and 2 have been given notice, may terminate the
4 covenant or reduce its burden on the real property subject to the
5 covenant. The agency's determination or its failure to make a
6 determination upon request is subject to review pursuant to the
7 Maine Administrative Procedure Act.

8 3. Extinguished, limited or impaired. Except as otherwise
9 provided in subsections 1 and 2, an environmental covenant may
10 not be extinguished, limited or impaired through issuance of a
11 tax deed or foreclosure of a tax lien or application of the
12 doctrine of adverse possession, prescription, abandonment,
13 waiver, lack of enforcement or acquiescence or a similar doctrine.

14 4. Laws governing marketable title and dormant mineral
15 interests. An environmental covenant may not be extinguished,
16 limited or impaired by application of laws governing marketable
17 title and dormant mineral interests.

18 §3010. Amendment or termination by consent

19 1. Amendment or termination. An environmental covenant may
20 be amended or terminated by consent only if the amendment or
21 termination is signed by:

22 A. The agency;

23 B. Unless waived by the agency, the current owner of the
24 fee simple of the real property subject to the covenant;

25 C. Each person that originally signed the covenant, unless
26 the person waived in a signed record the right to consent or
27 a court finds that the person no longer exists or cannot be
28 located or identified with the exercise of reasonable
29 diligence; and

30 D. Except as otherwise provided in subsection 4, paragraph
31 B, the holder.

32 2. Effect of amendment of covenant. If an interest in real
33 property is subject to an environmental covenant, the interest is
34 not affected by an amendment of the covenant unless the current
35 owner of the interest consents to the amendment or has waived in
36 a signed record the right to consent to amendments.

37 3. Assignment to new holder. Except for an assignment
38 undertaken pursuant to a governmental reorganization, assignment
39 of an environmental covenant to a new holder is an amendment.

2 4. Assignment by holder; removal and replacement of
3 holder. Except as otherwise provided in an environmental
4 covenant:

5 A. A holder may not assign its interest without consent of
6 the other parties; and

7 B. A holder may be removed and replaced by agreement of the
8 other parties specified in subsection 1.

9 5. Vacancy filled by court. A court of competent
10 jurisdiction may fill a vacancy in the position of holder.

11 **§3011. Enforcement of environmental covenant**

12 1. Civil action. A civil action for injunctive or other
13 equitable relief for violation of an environmental covenant may
14 be maintained by:

15 A. A party to the covenant unless the agency determines
16 otherwise for good cause at the time the environmental
17 covenant is created, but in that event the party has no
18 liability for any violation of the covenant by others;

19 B. The agency or, if it is not the agency, the department;

20 C. Any person to whom the covenant expressly grants power
21 to enforce;

22 D. A person whose interest in the real property or whose
23 collateral or liability may be affected by the alleged
24 violation of the covenant; or

25 E. A municipality or other unit of local government in
26 which the real property subject to the covenant is located.

27 2. Effect or regulatory authority. This chapter does not
28 limit the regulatory authority of the agency or the department
29 under any law other than this chapter with respect to an
30 environmental response project.

31 3. Liability for environmental remediation. A person is
32 not responsible for or subject to liability for environmental
33 remediation solely because the person has the right to enforce an
34 environmental covenant.

35 **§3012. List of environmental covenants; notice of recording**

36 1. Maintain list. The department may maintain a list of
37 all environmental covenants adopted under this chapter, which
38

2 may include any amendment or termination of those covenants. The
3 list may also contain any other information concerning
4 environmental covenants and the real property subject to them
5 that the department considers appropriate.

6 2. Recording required. The agency shall specify the person
7 required to record in the land records the environmental covenant
8 or the amendment or termination of a covenant. Within 30 days of
9 the date of recording an environmental covenant or an amendment
10 or termination of a covenant in the land records, the person
11 shall file with the agency, and the department if it is not the
12 agency, a complete copy of the recorded documents including a
13 description of where the documents may be found in the land
14 records.

16 **§3013. Uniformity of application and construction**

18 In applying and construing this chapter, consideration must
19 be given to the need to promote uniformity of the law with
20 respect to its subject matter among states that enact it.

22 **§3014. Relation to federal Electronic Signatures in Global and**
23 **National Commerce Act**

24 This chapter modifies, limits or supersedes the federal
25 Electronic Signatures in Global and National Commerce Act, 15
26 United States Code, Section 7001 et seq. but does not modify,
27 limit or supersede Section 101 of that Act, 15 United States
28 Code, Section 7001(a) or authorize electronic delivery of any of
29 the notices described in Section 103 of that Act, 15 United States
30 Code, Section 7003(b).

34 **SUMMARY**

36 This bill adopts the Uniform Environmental Covenants Act as
37 prepared by the National Conference of Commissioners of Uniform
38 State Laws to provide a systematic approach to adoption and
39 recording of environmental covenants, such as deed restrictions,
40 and to protect the legal integrity of covenants once recorded.