

MAINE STATE LEGISLATURE

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Date: 06-13-07

(Filing No. S-305)

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STATE OF MAINE
SENATE
123RD LEGISLATURE
FIRST REGULAR SESSION

SENATE AMENDMENT "B" to COMMITTEE AMENDMENT "A" to H.P. 1220, L.D. 1737, Bill, "An Act To Amend the Conservation Easement Laws"

Amend the amendment by striking out the first paragraph after the title (page 1, line 11 in amendment) and inserting the following:

Amend the bill by striking out all of sections 2 to 6 and inserting the following:

Sec. 2. 33 MRSA §477, sub-§1, as enacted by PL 1985, c. 395, §3, is amended to read:

1. Conservation easement. Except as otherwise provided in this subchapter, a conservation easement may be created, conveyed, recorded, assigned, or partially released, modified, terminated or otherwise altered or affected in the same manner as other easements created by written instrument. A conservation easement may be terminated or amended by the parties only as provided in section 477-A, subsection 2.

Sec. 3. 33 MRSA §477, sub-§3, ¶B, as enacted by PL 1985, c. 395, §3, is amended to read:

B. Change of circumstances renders the easement no longer in the public interest as determined by the court as provided in section 477-A, subsection 2, paragraph B in an action under section 478.

Sec. 4. 33 MRSA §477-A is enacted to read:

§477-A. Conservation easement standards

1. Conservation values. A conservation easement executed on or after the effective date of this section must include a statement of the conservation purposes of the easement, the conservation attributes associated with the real property and the benefit to the general public intended to be served by the restriction on uses of the real property subject to the conservation easement.

2. Amendment and termination. Amendments and termination of a conservation easement may occur only pursuant to this subsection.

SENATE AMENDMENT

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1 A. A conservation easement executed on or after the effective date of this section
2 must include a statement of the holder's power to agree to amendments to the terms of
3 the conservation easement in a manner consistent with the limitations of paragraph B.

4 B. A conservation easement may not be terminated or amended in such a manner as
5 to materially detract from the conservation values intended for protection without the
6 prior approval of the court in an action in which the Attorney General is made a
7 party. In making this determination, the court shall consider, among other relevant
8 factors, the purposes expressed by the parties in the easement and the public interest.
9 If the value of the landowner's estate is increased by reason of the amendment or
10 termination of a conservation easement, that increase must be paid over to the holder
11 or to such nonprofit or governmental entity as the court may designate, to be used for
12 the protection of conservation lands consistent, as nearly as possible, with the stated
13 publicly beneficial conservation purposes of the easement.

14 3. Monitoring. The holder of a conservation easement shall monitor the condition
15 of the real property subject to the conservation easement at least every 3 years and shall
16 prepare and retain a written monitoring report in its permanent records. The holder shall
17 make available to the landowner, upon request, a copy of the monitoring report.

18 4. Failure to comply. Failure to comply with the requirements of subsection 1,
19 subsection 2, paragraph A or subsection 3 does not invalidate a conservation easement
20 otherwise entitled to the protections of this subchapter.

21 **Sec. 5. 33 MRSA §478**, as enacted by PL 1985, c. 395, §3, is amended to read:

22 **§478. Judicial actions**

23 **1. Action or intervention.** An action affecting a conservation easement may be
24 brought or intervened in by:

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

26 B. A holder of the easement; or

27 C. A person having a 3rd-party right of enforcement; or

28 D. The Attorney General; except that the Attorney General may initiate action
29 seeking enforcement of a conservation easement only when the parties designated as
30 having the right to do so under the terms of the conservation easement:

31 (1) Are no longer in legal existence;

32 (2) Are bankrupt or insolvent;

33 (3) Cannot be contacted after reasonable diligence to do so; or

34 (4) After 90 days' prior written notice by the Attorney General of the nature of
35 the asserted failure, have failed to take reasonable actions to bring about
36 compliance with the conservation easement.

37 **2. Intervention only.** An action affecting a conservation easement may be
38 intervened in by ~~the State~~ or a political subdivision of the State in which the real property

1 burdened by the easement is located, in accordance with court rules for permissive
2 intervention.

3 **3. Power of court.** ~~This subchapter does not affect the power of a~~ The court to may
4 permit termination of a conservation easement or approve amendment to a conservation
5 easement that materially detracts from the conservation values it serves, as provided in
6 section 477-A, subsection 2, paragraph B, and may enforce a conservation easement by
7 injunction or proceeding at law and in equity ~~or to modify or terminate a conservation~~
8 ~~easement in accordance with principles of law and equity.~~ A court may deny equitable
9 enforcement of a conservation easement only when it finds that change of circumstances
10 has rendered that easement no longer in the public interest or no longer serving the
11 publicly beneficial conservation purposes identified in the conservation easement. If the
12 court so finds, the court may allow damages as the only remedy in an action to enforce
13 the easement.

14 ~~No comparative economic test may be used to determine under this subsection if a~~
15 ~~conservation easement is in the public interest.~~

16 **4. Confidentiality of records.** Documents and records obtained by the Attorney
17 General, which would otherwise not legally be subject to public disclosure, may be
18 shared with other public agencies but must be held as legally confidential under Title 1,
19 section 402, unless disclosed in the course of a public proceeding in court.

20 No comparative economic test may be used to determine under this subchapter if a
21 conservation easement is in the public interest or serves a publicly beneficial conservation
22 purpose.' '

23 **SUMMARY**

24 This amendment sets certain standards for conservation easements. It provides that a
25 conservation easement executed on or after the effective date of this legislation must
26 include a statement of the conservation purposes and public benefits of the easement. It
27 includes standards for the amendment and termination of a conservation easement. It
28 requires the holder of a conservation easement to monitor the condition of the real
29 property subject to the conservation easement at least every 3 years and prepare and
30 retain a written monitoring report.

31 The amendment also amends the laws governing judicial actions affecting
32 conservation easements. It provides that an action affecting a conservation easement may
33 be brought or intervened in by the Attorney General and it specifies under what
34 circumstances the Attorney General may initiate action seeking enforcement of a
35 conservation easement. It contains a provision regarding the confidentiality of documents
36 and records obtained by the Attorney General in an action affecting a conservation
37 easement.

38 SPONSORED BY: 

39 (Senator DAMON)

40 COUNTY: Hancock