

MAINE STATE LEGISLATURE

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No. 1737

H.P. 1220

House of Representatives, March 26, 2007

An Act To Amend the Conservation Easement Laws

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative PIOTTI of Unity.

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

2 **Sec. 1. 33 MRSA §476, sub-§3**, as enacted by PL 1985, c. 395, §3, is amended to
3 read:

4 **3. Real property.** "Real property" includes without limitation surface waters.

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

7 **1. Conservation easement.** Except as otherwise provided in this subchapter, a
8 conservation easement may be created, conveyed, recorded, assigned, or released,
9 ~~modified, terminated or otherwise altered or affected~~ in the same manner as other
10 easements created by written instrument. A conservation easement may be terminated or
11 amended by the parties only as provided in section 477-A, subsection 3.

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

14 B. Change of circumstances renders the easement no longer in the public interest as
15 determined by the holder with the approval of the court as provided in section 477-A,
16 subsection 3, paragraph B in an action under section 478.

17 **Sec. 4. 33 MRSA §477, sub-§5**, as enacted by PL 1985, c. 395, §3, is amended to
18 read:

19 **5. Entitled to enter land.** The instrument creating a conservation easement must
20 provide in what manner and at what times representatives of the holder of a conservation
21 easement or of any person having a ~~3rd party~~ right of enforcement ~~shall be~~ are entitled to
22 enter the land to assure compliance.

23 **Sec. 5. 33 MRSA §477-A** is enacted to read:

24 **§477-A. Conservation easement standards**

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

30 **2. Baseline documentation.** For a conservation easement executed on or after the
31 effective date of this section, the grantor must make available to the holder and the 3rd
32 party with rights of enforcement, no later than 180 days following the date of the
33 easement's execution, written documentation sufficient to accurately establish the
34 condition of the real property as of the date of execution. The holder and 3rd party shall
35 retain any such documentation in their permanent records.

36 **3. Amendment and termination.** Amendments and termination of a conservation
37 easement may occur only pursuant to this subsection.

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
3 of the conservation easement without resort to the procedures set forth in paragraph B
4 and limitations on any such power designed to protect the public interest or publicly
5 beneficial conservation purposes intended to be served by the conservation easement,
6 consistent with the limitations of paragraph B.

7 B. A conservation easement may not be terminated or amended in such a manner as
8 to materially detract from the conservation values intended for protection without the
9 prior approval of the court in an action in which the Attorney General is made a
10 party. Termination or amendment that materially detracts from the conservation
11 values intended for protection may be approved only when it is found by the court
12 that the conservation easement or the provision proposed to be amended, as the case
13 may be, does not serve the public interest or publicly beneficial conservation purpose,
14 taking into account, among other things, the purposes expressed by the parties in the
15 easement. Any such approval may be sought only with the consent of the holder. If
16 the value of the landowner's estate is increased by reason of the amendment or
17 termination of a conservation easement, that increase must be paid over to the holder
18 or to such nonprofit or governmental entity as the court may designate, to be used for
19 the protection of conservation lands consistent, as nearly as possible, with the stated
20 publicly beneficial conservation purposes of the easement.

21 **4. Monitoring.** The holder of a conservation easement shall monitor the condition
22 of the real property subject to the conservation easement at least every 3 years and shall
23 prepare and retain a written monitoring report in its permanent records.

24 **5. Failure to comply.** Failure to comply with the requirements of subsection 1 does
25 not invalidate a conservation easement otherwise entitled to the protections of this
26 subchapter.

27 **Sec. 6. 33 MRSA §478,** as enacted by PL 1985, c. 395, §3, is amended to read:

28 **§478. Judicial actions**

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

- 31 A. An owner of an interest in the real property burdened by the easement;
32 B. A holder of the easement; ~~or~~
33 C. A person having a 3rd-party right of enforcement; or
34 D. The Attorney General.

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

38 **3. Power of court.** ~~This subchapter does not affect the power of a~~ The court to may
39 permit termination of a conservation easement or approve amendment to a conservation
40 easement that materially detracts from the conservation values it serves, as provided in

1 section 477-A, subsection 3, paragraph B, or to enforce a conservation easement by
2 injunction or proceeding in equity ~~or to modify or terminate a conservation easement in~~
3 accordance with principles of law and equity. A court may deny equitable enforcement
4 of a conservation easement only when it finds that change of circumstances has rendered
5 that easement no longer in the public interest or no longer serving any publicly beneficial
6 conservation purpose. If the court so finds, the court may allow damages as the only
7 remedy in an action to enforce the easement. Laches does not apply as a defense in any
8 action brought to enforce the terms of a conservation easement or the requirements of this
9 subchapter.

10 No comparative economic test may be used to determine under this ~~subsection~~ subchapter
11 if a conservation easement is in the public interest or serves a publicly beneficial
12 conservation purpose.

13 **Sec. 7. 33 MRSA §479, sub-§7,** as enacted by PL 1985, c. 395, §3, is amended to
14 read:

15 **7. No privity of estate or of contract.** There is no privity of estate or of contract; ~~or~~

16 **Sec. 8. 33 MRSA §479, sub-§8,** as enacted by PL 1985, c. 395, §3, is amended to
17 read:

18 **8. Does not run to successors or assigns.** It does not run to the successor and
19 assigns of the holder.;

20 **Sec. 9. 33 MRSA §479, sub-§9** is enacted to read:

21 **9. Acquired for tax delinquency.** A lien has been established for property tax
22 delinquency under Title 36, section 552, or title to the real property subject to the
23 conservation easement has been acquired by procedures for enforcement and foreclosure
24 of delinquent taxes under Title 36, chapter 105, subchapter 9; or

25 **Sec. 10. 33 MRSA §479, sub-§10** is enacted to read:

26 **10. Merger.** The title to the real property subject to the conservation easement has
27 been acquired by the holder, unless the holder, with the consent of any 3rd party with
28 rights of enforcement, replaces the conservation easement with legally binding
29 restrictions under a conservation easement or declaration of trust at least as protective of
30 the conservation values of the protected property as provided by the replaced easement.

31 **Sec. 11. 33 MRSA §479-C** is enacted to read:

32 **§479-C. Conservation easement registry and transfer tax form checkoff**

33 **1. Conservation easement registration.** A holder of a conservation easement that
34 is organized or doing business in the State shall annually report to the Secretary of State
35 the book and page number at the registry of deeds for each conservation easement that it
36 holds, the municipality and approximate number of acres protected under each easement
37 and a statement of its compliance with section 477-A, subsections 2 and 4. The filing
38 must be made by a date and on forms established by the Secretary of State to avoid

1 duplicative filings when possible and otherwise reduce administrative burdens. Each
2 annual filing must be accompanied by a \$10 fee in addition to any other fees prescribed
3 by law. The Secretary of State shall forward the fee and the registration information to
4 the Executive Department, State Planning Office, which shall maintain a permanent
5 record of the registration and report to the Attorney General any failure of a holder
6 disclosed by the filing or otherwise known to the State Planning Office. The fees
7 established under this subsection must be held by the State Planning Office in a
8 nonlapsing, special account to defray the costs of maintaining the registry. Government
9 holders shall make such declaration and forward such conservation easement data directly
10 to the State Planning Office by April 1st of each year.

11 **2. Transfer tax form.** The transfer tax form required under Title 36, section 4641-D
12 must include a statement disclosing whether the real property is subject to a conservation
13 easement and, if so, that the holder has been notified of the transfer of title to the real
14 estate. This notification to the holder is required.

15 **SUMMARY**

16 This bill enacts changes to the laws governing the creation, alteration and termination
17 of conservation easements. Under the bill, a court must find that a change of
18 circumstances makes the conservation easement no longer in the public interest before the
19 conservation easement may be terminated or amended in a manner that diminishes its
20 conservation purposes. The bill also requires that future conservation easements must
21 clearly recite the conservation purposes and public benefits of the easement. The bill
22 further requires that future conservation easements include a statement of the power of
23 the holder to amend the easement and be accompanied by documentation of the condition
24 of the property. As necessary to future enforcement of conservation easements, holders
25 are required to periodically monitor the condition of the property subject to the easement.

26 This bill also allows the Attorney General to be a party in any action affecting a
27 conservation easement, as the Attorney General may with any charitable trust. The bill
28 also provides that conservation easements will not be destroyed by reason of merger of
29 the fee and easement holder's interests nor by tax foreclosure.

30 Finally, this bill establishes a conservation easement registration system administered
31 by the Secretary of State and Executive Department, State Planning Office with a modest
32 annual filing fee, and requires that the transfer tax form for property subject to a
33 conservation easement disclose that notice of the property's transfer has been given to the
34 holder of the easement.