

MAINE STATE LEGISLATURE

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AGRICULTURE, CONSERVATION AND FORESTRY

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STATE OF MAINE

SENATE

129TH LEGISLATURE

FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 411, L.D. 1323, Bill, "An Act To Revise the Laws Regarding the Public Trust in Intertidal Lands"

Amend the bill by striking out everything after the enacting clause and inserting the following:

Sec. 1. 1 MRSA §2, sub-§2-A, as enacted by PL 1973, c. 525, is amended to read:

2-A. Harvesting. The State of Maine declares that it owns and ~~shall control~~ controls the harvesting of the living resources of the seas adjoining the coastline for a distance of 200 miles or to the furthest edge of the Continental Shelf, whichever is greater, subject only to the boundary with Canada. Control over the harvesting of these living resources ~~shall be~~ is by licenses or permits issued by the Department of Marine Resources. For purposes of this subsection, "coastline" includes the intertidal zone as defined in Title 12, section 6001, subsection 21 and "living resources" includes all marine resources and renewable marine organisms as defined in Title 12, section 6001, subsections 26 and 27;

Sec. 2. 12 MRSA §571, as enacted by PL 1985, c. 782, is amended to read:

§571. Legislative findings and purpose

The Legislature finds and declares, as have courts in this State, that the intertidal lands of the State are impressed with a public trust and that the State is responsible for protection of the public's interest in this land, which has unique public value. Historic uses such as fishing, fowling and navigation remain, to varying degrees, important today. Other historic uses such as lateral passage of individuals, carts and wagons, the movement and grazing of livestock and the cutting of salt marsh grasses are little used today. Still other historic uses such as the building of seawalls, jetties and groins, the parking and racing of motor vehicles and the storage of small boats and fishing gear are often prohibited altogether or closely regulated today.

The Legislature further finds and declares that this public trust is part of the common law of Maine and generally derived from the practices, conditions and needs in Maine, from English Common Law and from the Massachusetts Colonial Ordinance of 1641-47.

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1 The public trust is an evolving doctrine reflective of the customs, traditions, heritage and
2 habits of the Maine people. In Maine, the doctrine has diverged from the laws of England
3 and Massachusetts. The public trust encompasses those uses of intertidal land essential to
4 the health and welfare of the Maine people, which uses include, but are not limited to,
5 fishing, fowling, navigation, use as a footway between points along the shore and use for
6 recreational purposes. These recreational uses are among the most important to the Maine
7 people today who use intertidal land for relaxation from the pressures of modern society
8 and for enjoyment of nature's beauty.

9 The Legislature further finds and declares that in the 21st century public uses of
10 intertidal land cannot be limited to these uses. These uses cannot be seen as fixed or
11 static. Like all legislative and common law principles, public uses of intertidal land must
12 evolve with changed conditions and today extend to a wide range of recreational and
13 commercial uses, many of which could not even be imagined when Maine became a state,
14 much less when the Colonial Ordinance of 1641-47 was adopted by the State of
15 Massachusetts.

16 The Legislature further finds and declares that the protection of the public uses
17 referred to in this chapter is of great public interest and grave concern to the State and
18 these evolving public uses of intertidal land confer both economic and general welfare
19 benefits on the citizens of this State. In a global economy, the economic value in a
20 tourist-oriented state of recreational uses on intertidal beach areas cannot be overstated;
21 nor can the growing commercial uses and value of renewable marine resources such as
22 seaweed harvesting, the commercial and social importance of the State's working
23 waterfronts or the need to maintain sustainable fisheries be overstated. All are of
24 increasing importance to the social wealth and economic well-being of the people of the
25 State, especially in rural communities. The maintenance of sustainable fisheries is
26 particularly important given the State's policy and commitment to greater food self-
27 sufficiency as set forth in Title 7, section 211.

28 The Legislature further finds and declares that the protection of present and future
29 benefits derived from our intertidal lands and the marine organisms that populate these
30 soils and waters is a legislative duty and essential to the long-term well-being of Maine
31 people. Evolving uses and benefits can be made secure, regulated and legislatively
32 adjusted as necessary. Whether the State is seen to be acting to discharge its public trust
33 duties with respect to intertidal land, expanding common law uses on such land or
34 exercising the State's police power, a power that applies to both publicly held and
35 privately held property interests, is a matter of indifference; all fall within the legislative
36 prerogative.

37 **Sec. 3. 12 MRSA §§574 to 576 are enacted to read:**

38 **§574. Permitted public use rights on intertidal land**

39 **1. Historic uses.** Any of the historic uses of intertidal land under section 571 are
40 permitted, except those expressly prohibited by statute or rule adopted by a state agency
41 charged with oversight of intertidal land. Permitted historic uses are subject to rules
42 adopted by a state agency charged with protecting the public health, safety and general
43 welfare.

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1 2. Recreational uses. Unless expressly prohibited by statute or rule adopted by a
2 state agency charged with oversight of intertidal land, water-related recreational uses of
3 intertidal land, including, but not limited to, playing in the water, swimming, snorkeling
4 and using skim, surf and paddle boards, are permitted. Additionally, on exposed areas of
5 intertidal land, permitted recreational uses include, but are not limited to, sitting, walking,
6 running, reading, sunbathing, picnicking, the throwing of balls and other toys and the
7 building of sandcastles. All recreational uses are subject to laws enacted by the
8 Legislature and rules adopted by a state agency charged with protecting the public health,
9 safety and general welfare.

10 3. Commercial uses. Unless expressly prohibited by statute or rule adopted by a
11 state agency charged with oversight of intertidal land, commercial uses of intertidal land,
12 including, but not limited to, harvesting of seaweed, fish, shellfish or other marine
13 organisms, are permitted. All commercial uses are subject to licensing and use laws
14 enacted by the Legislature and rules adopted by a state agency charged with protecting
15 the public health, safety and general welfare.

16 **§575. Limitation on public use rights on intertidal land**

17 The public use rights under section 574 do not allow any individual to:

18 1. Structure or improvement. Interfere with or trespass on any structure or
19 improvement erected or maintained on intertidal land in accordance with state law;

20 2. Refuse or waste materials. Deposit or leave any refuse or waste materials on
21 intertidal land or in overlying waters;

22 3. Private property. Trespass on private property that is above the mean high tide
23 line;

24 4. Access to intertidal land. Gain access to intertidal land by any means other than
25 by a public way, right-of-way or easement that terminates at the mean high tide line or by
26 water, such as by kayak, canoe, motorized watercraft, paddle board or swimming; or

27 5. Motorized vehicle. Operate or park any motorized vehicle on intertidal land
28 except to perform emergency or rescue service.

29 **§576. Miscellaneous provisions**

30 1. Municipal powers. Municipalities may exercise their police powers to adopt
31 ordinances to prevent and resolve disturbances on and set reasonable hours of operation
32 for intertidal land generally and beach areas in particular. Municipal ordinances may not
33 override or conflict with intertidal land use laws enacted by the Legislature or rules
34 adopted by a state agency charged with protecting the public health, safety and general
35 welfare. Municipalities may not prohibit intertidal land uses under section 574. Nothing
36 in this section may be construed to prohibit a municipality from adopting or enforcing a
37 shellfish conservation ordinance pursuant to section 6671.

38 2. Right to intervene. The Attorney General may intervene in any lawsuit that may
39 affect the public trust rights to the intertidal zone.

40 **Sec. 4. 12 MRSA §6001, sub-§26,** as amended by PL 1997, c. 123, §1, is further
41 amended to read:

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