

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWELFTH LEGISLATURE

FIRST REGULAR SESSION

December 5, 1984 to June 20, 1985
Chapters 384-End

AND AT THE

FIRST SPECIAL SESSION

November 13, 1985

PUBLISHED BY THE DIRECTOR OF REVISOR OF STATUTES IN
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Co., Inc.
Augusta, Maine
1985

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION
CONTINUED

and

FIRST SPECIAL SESSION

of the

ONE HUNDRED AND TWELFTH LEGISLATURE

1985

excess of 50% of the votes that all shareholders would be entitled to cast in the election of directors of that subsidiary; provided that a subsidiary will not be deemed to cease being a subsidiary so long as such corporation remains a controlling person within the meaning of subsection 2; or

C. Any person or group that becomes a controlling person solely as a result of the corporation's purchase or redemption of its own voting shares.

Effective September 19, 1985.

CHAPTER 395

S.P. 626 - L.D. 1640

AN ACT to Adopt the Uniform Conservation Easement Act.

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

Sec. 1. 33 MRSA §667, as enacted by PL 1969, c. 566, §1, is repealed.

Sec. 2. 33 MRSA §668, as amended by PL 1983, c. 458, §13, is repealed.

Sec. 3. 33 MRSA c. 7, sub-c. VIII-A is enacted to read:

SUBCHAPTER VIII-A

CONSERVATION EASEMENTS

§476. Definitions

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

1. Conservation easement. "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic or open space values of real property; assuring its availability for agricultural, forest, recreational or open space use; pro-

protecting natural resources; or maintaining or enhancing air or water quality of real property.

2. Holder. "Holder" means:

A. A governmental body empowered to hold an interest in real property under the laws of this State or the United States; or

B. A nonprofit corporation or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic or open space values of real property; assuring the availability of real property for agricultural, forest, recreational or open space use; protecting natural resources; or maintaining or enhancing air or water quality or preserving the historical, architectural, archaeological or cultural aspects of real property.

3. Real property. "Real property" includes surface waters.

4. Third-party right of enforcement. "Third-party right of enforcement" means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, nonprofit corporation or charitable trust, which, although eligible to be a holder, is not a holder.

§477. Creation, conveyance, acceptance and duration

1. Conservation easement. Except as otherwise provided in this subchapter, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated or otherwise altered or affected in the same manner as other easements created by written instrument.

2. Right or duty. No right or duty in favor of or against a holder arises under a conservation easement unless it is accepted by the holder and no right in favor of a person having a 3rd-party right of enforcement arises under a conservation easement unless it is accepted by any person having a 3rd-party right of enforcement.

3. Limitation. Except as provided in this subchapter, a conservation easement is unlimited in duration unless:

A. The instrument creating it otherwise provides; or

B. Change of circumstances renders the easement no longer in the public interest as determined in an action under section 478.

4. Interest. An interest in real property in existence at the time a conservation easement is created shall not be impaired by it unless the owner of the interest is a party to the conservation easement or consents to it.

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

§478. Judicial actions

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

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

B. A holder of the easement; or

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

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

3. Power of court. This subchapter does not affect the power of a court to enforce a conservation easement by injunction or proceeding in equity or to modify or terminate a conservation easement in accordance with principles of law and equity. A court may deny equitable enforcement of a conservation easement when it finds that change of circumstances has rendered that easement no longer in the public interest. If the court so finds, the court may allow damages as the only remedy in an action to enforce the easement.

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

§479. Validity

A conservation easement is valid even though:

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

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

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

4. Negative burden. It imposes a negative burden;

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

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

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

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

§479-A. Applicability

1. Interest created after effective date. This subchapter applies to any interest created after its effective date which complies with this subchapter, whether designated as a conservation easement or as a covenant, equitable servitude, restriction, easement or otherwise.

2. Conservation easement created before effective date. This subchapter applies to any conservation easement created before the effective date of this subchapter if the conservation easement would have been enforceable had it been created after the effective date of this subchapter, unless retroactive application contravenes the Constitution of Maine or the United States Constitution.

3. Subchapter does not invalidate interest. This subchapter does not invalidate any interest, whether designated as a conservation or preservation easement

or as a covenant, equitable servitude, restriction, easement or otherwise, that is enforceable under other laws of this State.

§479-B. Uniformity of application and construction

This subchapter shall be applied and construed to effectuate its general purpose to make uniform the laws with respect to the subject of the subchapter among states enacting it.

Effective September 19, 1985.

CHAPTER 396

S.P. 597 - L.D. 1566

AN ACT Concerning the Court Mediation Service and the Conduct of Mediation.

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

Sec. 1. 4 MRSA §18 is enacted to read:

§18. Court Mediation Service

1. Court Mediation Service. There is established within the Judicial Department a Court Mediation Service to provide mediation in both the Superior and District Courts throughout the State.

2. Mediators. The Judicial Department through the State Court Administrator or his designee shall contract for the services of qualified persons to serve as mediators. The mediators shall not be considered employees of the State for any purpose. They shall be paid a reasonable per diem fee plus reimbursement of their actual, necessary and reasonable expenses incurred in the performance of their duties, consistent with policies established by the Administrative Office of the Courts.

3. Staff. With the advice and approval of the Court Mediation Committee, the Chief Judge of the District Court shall designate one of the mediators to serve at his pleasure as Director of the Court Mediation Service. The Chief Judge of the District Court may also designate from among the mediators one or more deputy directors, who also shall serve at his pleasure. The Chief Judge of the District Court