

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

FIRST REGULAR SESSION

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Chapters 1 - 590

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PUBLIC LAWS

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The system shall cooperate with health profession students and programs that receive state support through the Finance Authority of Maine or other state entities. The system may provide clinical training and other support to those students and programs as appropriate.

§12859. Relationship of the Maine Area Health Education Centers System to other area health education center systems

This chapter does not prohibit an existing or proposed area health education center program from operating in the State separate from the system.

See title page for effective date.

CHAPTER 373

H.P. 1208 - L.D. 1764

An Act to Promote Affordable Housing for Persons of Low to Moderate Income

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, opportunities now exist to provide affordable housing to the citizens of the State who will benefit from this Act; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

33 MRSA c. 6 is enacted to read:

CHAPTER 6

AFFORDABLE HOUSING COVENANTS

§121. Definitions

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

1. Affordable housing covenant. "Affordable housing covenant" means any agreement among one or more owners, one or more tenants of residential real estate and one or more qualified holders, or between one or more owners and one or more qualified holders, or between one or more tenants and one or more qualified holders, that permits a qualified holder to control, either directly or indirectly, the purchase price of residential housing for the primary purpose of providing that the housing remains affordable to lower income and moderate-income households.

2. Lower income and moderate-income households. "Lower income and moderate-income households" means very low-income, low-income and moderate-income households as defined in the Affordable Housing Partnership Act of 1989.

3. Qualified holder. "Qualified holder" means a governmental entity empowered to hold an interest in real property under the laws of this State or the United States or a nonprofit organization whose purposes include the provision of affordable housing or the increasing of affordable housing opportunities for lower income or moderate-income households including governmental or quasi-governmental entities such as public housing authorities, community action agencies or other similar nonprofit or governmental entities committed to providing opportunities for lower income or moderate-income households to obtain affordable housing.

§122. Creation; conveyance; acceptance; duration

1. Affordable housing covenant. Except as otherwise provided in this chapter, an affordable housing covenant may be created, conveyed, recorded, assigned, released, modified, terminated or otherwise altered or affected in the same manner as other covenants created by written instrument.

2. Right or duty. A right or duty in favor of or against a qualified holder may not arise under an affordable housing covenant unless it is accepted by the qualified holder.

3. Limitation. Except as provided in this chapter, an affordable housing covenant is unlimited in duration unless:

A. The instrument creating it provides otherwise; or

B. A change of circumstances renders the affordable housing covenant no longer in the public interest as determined in an action under section 123, subsection 3.

4. Interest. An interest in real property in existence at the time that an affordable housing covenant is created is not impaired by the affordable housing covenant unless the owner of the interest is a party to the affordable housing covenant.

5. Right to enter land. The instrument creating an affordable housing covenant must designate the manner in which and the times when representatives of the holder of an affordable housing covenant are entitled to enter the real property to assure compliance.

§123. Judicial actions

1. Owners; qualified holders. An action affecting an affordable housing covenant may be brought or intervened in by:

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

B. A qualified holder of the benefit of the affordable housing covenant.

2. State; political subdivision. An action affecting an affordable housing covenant may be intervened in by the State or a political subdivision of the State in which the real property burdened by the covenant is located.

3. Power of court. This chapter does not affect the power of a court to enforce an affordable housing covenant by injunction or proceeding in equity or to modify or terminate an affordable housing covenant in accordance with principles of law and equity. A court may deny equitable enforcement of an affordable housing covenant when it finds that a change of circumstances has rendered that covenant 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 affordable housing covenant.

A comparative economic test may not be used to determine under this subsection if an affordable housing covenant is in the public interest.

§124. Scope of affordable housing covenant

An affordable housing covenant may include any of the following agreements affecting residential real estate:

1. Resale price of residential real estate. To limit the resale price of residential real estate;

2. Amount of equity appreciation. To limit the amount of equity appreciation that a landowner may derive from ownership of residential real estate;

3. Improvements to residential real estate. To limit the extent or dollar value of improvements that may be made to residential real estate;

4. Class of persons to whom residential real estate may be sold. To restrict the class of persons to whom residential real estate may be sold or leased, as long as that restriction does not discriminate based upon race, color, sex, physical or mental handicap, religion, ancestry or national origin and does not otherwise contravene the Constitution of Maine or the United States Constitution;

5. Options to purchase. To grant rights of first refusal or options to purchase to qualified holders;

6. Maintenance and insurance of residential real estate. To maintain and insure residential real estate;

7. Right of qualified holders to enter and inspect. In accordance with section 122, subsection 5, to provide to qualified holders the right to periodic entry and inspection of residential real estate at reasonable times and after reasonable notice;

8. Construction and materials. To restrict, limit or specify types of construction and materials that may be used

in the construction of or improvements to residential real estate; and

9. Acts that may enhance affordability of residential real estate. To prohibit, limit or require other acts that may enhance the affordability of residential real estate over time to lower income or moderate-income households.

§125. Validity

An affordable housing covenant is valid and enforceable even when any of the following apply.

1. Not appurtenant to interest in real property. The affordable housing covenant is not appurtenant and does not run with an interest in real property.

2. Assignable to another holder. The affordable housing covenant can be or has been assigned to another qualified holder.

3. Not recognized at common law. The affordable housing covenant is not of a character traditionally recognized at common law.

4. Imposes a negative burden. The affordable housing covenant imposes a negative burden.

5. Imposes affirmative obligations. The affordable housing covenant imposes affirmative obligations upon the owner of an interest in the burdened property or upon the qualified holder.

6. Benefit does not touch or concern real property. The benefit of the affordable housing covenant is held by a qualified holder who has not retained property that would benefit from enforcement of the affordable housing covenant against the burdened property, or the benefit does not touch or concern real property in any other way.

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

8. Does not run to successors or assigns. The affordable housing covenant does not run to the successors or assigns of the qualified holder.

9. Unreasonable restraint on alienability. The affordable housing covenant may be construed by a court to be an unreasonable restraint on alienability.

10. In violation of rule against perpetuities. The affordable housing covenant may be construed by a court to violate the rule against perpetuities.

§126. Application

1. Interest created after effective date. This chapter applies to any interest that complies with this chapter created after the effective date of this chapter, whether designated as an affordable housing covenant or an equitable servitude, restriction easement or other interest.

2. Affordable housing covenant created before effective date. This chapter applies to any affordable housing covenant created before the effective date of this chapter if the affordable housing covenant would have been enforceable had it been created after the effective date of this chapter, unless retroactive application contravenes the Constitution of Maine or the United States Constitution.

3. Chapter does not invalidate interest. This chapter does not invalidate any interest, whether designated as an affordable housing covenant or an equitable servitude, restriction, easement or other interest, that is enforceable under other laws of this State.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective June 18, 1991.

CHAPTER 374

H.P. 967 - L.D. 1394

An Act to Improve Markets for Recycled Materials

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

Sec. 1. 5 MRSA §1812, first ¶, as amended by PL 1989, c. 585, Pt. C, §1, is further amended to read:

The terms "services," "supplies," "materials" and "equipment" as used in this chapter mean any and all services, articles or things ~~which shall be~~ that are used by or furnished to the State or any department or agency thereof, and any and all printing, binding, publication of laws, journals and reports. Except as provided in chapters 141 to 155, any and all services, supplies, materials and equipment needed by one or more departments or agencies of the State Government ~~shall must~~ be directly purchased or contracted for by the State Purchasing Agent, as may be determined from time to time by rules adopted pursuant to chapters 141 to 155, which rules the Department of Administration is authorized and empowered to make. It is the intent and purpose of this chapter that the State Purchasing Agent shall purchase collectively all services, supplies, materials and equipment for the State or any department or agency thereof in a manner that will best secure the greatest possible economy consistent with the grade or quality of the services, supplies, materials and equipment best adapted for the purposes for which they are needed. Whenever supplies and materials are available for purchase which are composed in whole or in part of recycled materials and are shown by the seller, supplier or manufacturer to be equal in quality and are competitively priced, except for paper and paper products, the State Purchasing Agent shall purchase such recycled supplies and materials. The State Purchasing Agent shall also review procurement procedures and bid specifications for the purchase of products and materials to ensure, to the maximum extent

feasible, the purchase of products or materials that are made with recycled materials or may be recycled or reused once discarded. For the purposes of this section and section 1812-B, "recycled materials" means materials that are composed in whole or in part of elements that are reused or reclaimed.

Sec. 2. 5 MRSA §1812-C, as enacted by PL 1989, c. 585, Pt. C, §3, is repealed and the following enacted in its place:

§1812-C. Use of composted and recycled organic materials and reclaimed soil and residuals

1. Activities. All state agencies shall, to the maximum extent practical and consistent with sound environmental practices, use composted and recycled organic materials and reclaimed soil and residuals in the following activities:

A. All land maintenance activities that are paid for by public funds;

B. All construction activities that are paid for by public funds; and

C. All land maintenance and construction activities that are awarded through grant-in-aid-programs to municipalities.

2. Standards. The Department of Agriculture, Food and Rural Resources shall develop standards for fertilizers and soil conditioners made from different mixes of compostable wastes that could be used by state agencies involved in land preparation and improvement work. These standards must be adopted by rule by January 1, 1990.

Sec. 3. 38 MRSA §1310-C, sub-§1, as enacted by PL 1987, c. 517, §25, is amended to read:

1. Objectives. The program ~~shall have~~ has the following objectives:

A. To accomplish the prompt closure of solid waste landfills which, through inappropriate siting, inadequate design and construction or improper operation, pose an actual or potential hazard to the environment and public health; and

B. To accomplish remedial activities to eliminate the existing hazards posed by those landfills; and

C. To provide markets for compost and reclaimed materials.

Sec. 4. 38 MRSA §1310-D, sub-§3, ¶A, as enacted by PL 1987, c. 517, §25, is amended to read:

A. Within 90 days of the receipt of a landfill evaluation, together with the recommendations for closure and, if any, remediation actions, the commissioner shall issue a proposed plan for closure and