

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Resolve, Directing the Attorney General To Pursue the State's Claim That It Holds Title to Maine's Intertidal Lands

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

Whereas, both the date of adjournment of the 129th Legislature and the date of the pending Law Court's decisions involving title to Maine's intertidal lands are unknown; and

Whereas, it is unknown whether the State's claim of title to its intertidal lands will be fully vindicated by pending decisions of the Law Court; and

Whereas, the State's claim of title to its intertidal lands is rooted in part in provisions and doctrines within the United States Constitution, federal laws and United States Supreme Court case law; and

Whereas, a final determination of the scope and meaning of these federal provisions, doctrines, laws and cases that leads to the conclusion that Maine in fact holds title to its intertidal lands can be made only by the United States Supreme Court; and

Whereas, prior Law Court cases, said to cede Maine's intertidal lands to upland owners, were not appealed to the United States Supreme Court, thus leaving unresolved these federally rooted claims that Maine holds title to its intertidal lands; and

Whereas, petitions for certiorari to the United States Supreme Court must be timely filed in order to raise these federally rooted claims that Maine holds title to its intertidal lands; and

Whereas, in the judgment of the Legislature, these facts and uncertainties 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

Sec. 1 Certiorari review by the United States Supreme Court of unresolved federal questions related to intertidal lands in Maine. Resolved: That, inasmuch as prior Law Court cases have ceded title to all of this State's intertidal land to upland owners in contexts where certiorari review by the United States Supreme Court of contrary claims of title by the State to these lands, rooted in part in federal constitutional provisions and doctrines, congressional enactments and United States Supreme Court cases, was not sought, and recognizing that the United States Supreme Court is the final arbiter of the scope and meaning of all federally rooted claims of land ownership, the Attorney General shall seek United States Supreme Court review of any future Law Court decision that does not fully vindicate the State's claim of title to its intertidal lands. In any such review the Attorney General shall raise not only the full range of federally rooted claims of title by the State to its intertidal lands but also the failure of the State's present judge-made intertidal land law to adhere to provisions of the Constitution of Maine requiring reasonableness in the alienation of trust property and imposing separation of powers limitations on the judicial branch of this State's government.

Sec. 2 An alternative to certiorari review by the United States Supreme Court of a future Law Court decision that does not fully vindicate the State's claim of title to its intertidal lands. Resolved: That, if present law of this State ceding title to all of the State's intertidal lands to upland owners remains in place without an opportunity within 2 years after the effective date of this resolve for certiorari review by the United States Supreme Court of federal constitutional provisions and doctrines, congressional enactments and United States Supreme Court cases that leads to the conclusion that the State does in fact hold title to its intertidal lands, the Attorney General shall commence in federal court an original proceeding in the form of a declaratory judgment action, asserting the State's claim of title to its intertidal lands based on these ignored federal grounds, and pointing out that the State's present judge-made intertidal lands law fails to adhere to provisions of the Constitution of Maine requiring reasonableness in the alienation of trust property and imposing separation of powers limitations on the judicial branch of this State's government.

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

SUMMARY

Pending before the Law Court are cases addressing the State's title to intertidal lands. This resolve directs the Attorney General to seek review in the United States Supreme Court of any decision by the Law Court that does not fully vindicate the State's title to intertidal lands. If there is no Law Court decision to appeal within 2 years, the Attorney General shall bring a declaratory judgment action in federal court to declare the State's title to intertidal lands, pursuing the case through to an appeal to the Supreme Court if necessary.