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Legislative Document

No. 1323

S.P. 411

In Senate, March 19, 2019

An Act To Revise the Laws Regarding the Public Trust in Intertidal Lands

Reference to the Committee on Agriculture, Conservation and Forestry suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator DOW of Lincoln.
Cosponsored by Representative EVANGELOS of Friendship.

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

2 **Sec. 1. 12 MRSA §571**, as enacted by PL 1985, c. 782, is amended to read:

3 **§571. Legislative findings and purpose**

4 The Legislature finds and declares, as have courts in this State, that the intertidal
5 lands of the State ~~are impressed with a public trust and that the State is responsible for~~
6 ~~protection of the public's interest in this land~~ have unique public value. Historic uses
7 such as fishing, fowling and navigation remain, to varying degrees, important today,
8 depending on the location and character of particular stretches of intertidal land, the ease
9 of access to such land and the proximity to population centers. Other historic uses such
10 as lateral passage of individuals, carts and wagons, the movement and grazing of
11 livestock and the cutting of salt marsh grasses are little used today. Still other historic
12 uses such as the building of seawalls, jetties and groins, the parking and racing of motor
13 vehicles, the storage of small boats and fishing gear and the removal of sand, gravel and
14 other materials are often prohibited altogether or closely regulated today.

15 The Legislature further finds and declares that ~~this public trust is part of the common~~
16 ~~law of Maine and generally derived from the practices, conditions and needs in Maine,~~
17 ~~from English Common Law and from the Massachusetts Colonial Ordinance of 1641-47.~~
18 ~~The public trust is an evolving doctrine reflective of the customs, traditions, heritage and~~
19 ~~habits of the Maine people. In Maine, the doctrine has diverged from the laws of England~~
20 ~~and Massachusetts. The public trust encompasses those uses of intertidal land essential to~~
21 ~~the health and welfare of the Maine people, which uses include, but are not limited to,~~
22 ~~fishing, fowling, navigation, use as a footway between points along the shore and use for~~
23 ~~recreational purposes. These recreational uses are among the most important to the Maine~~
24 ~~people today who use intertidal land for relaxation from the pressures of modern society~~
25 ~~and for enjoyment of nature's beauty in the 21st century public uses of intertidal land,~~
26 ~~while not excluding most historic uses, cannot be limited to these uses; these uses cannot~~
27 ~~be seen as fixed or static. Like all legislative and common law principles, public uses of~~
28 ~~intertidal land must evolve with changed conditions and today extend to a wide range of~~
29 ~~recreational and commercial uses, many of which could not even be imagined when~~
30 ~~Maine became a state, much less when the Massachusetts Colonial Ordinance of 1641-47~~
31 ~~was adopted.~~

32 The Legislature further finds and declares that ~~the protection of the public uses~~
33 ~~referred to in this chapter is of great public interest and grave concern to the State~~ these
34 evolving public uses of intertidal land confer both economic and general welfare benefits
35 on the citizens of this State and that mechanisms exist by which these evolving uses and
36 benefits can be made secure and regulated as necessary. Whether the State is seen to be
37 acting to discharge its public trust duties with respect to state-owned intertidal land or
38 exercising the State's police power, a power that applies to both publicly held and
39 privately held property interests, is a matter of indifference.

40 **Sec. 2. 12 MRSA §572**, as enacted by PL 1985, c. 782, is repealed and the
41 following enacted in its place:

1 **§572. Definitions**

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

4 **1. Intertidal land.** "Intertidal land" means land intermittently flooded by action of
5 the tides, lying between the mean high tide line and the mean low tide line or land
6 extending 100 rods seaward from the mean high tide line, whichever is the shorter
7 distance.

8 **2. Submerged land.** "Submerged land" means land lying 100 rods from the mean
9 high tide line or land lying seaward of the mean low tide line if the mean low tide line is
10 less than 100 rods from the mean high tide line. "Submerged land" is land that is seldom
11 exposed by action of the tides.

12 **Sec. 3. 12 MRSA §573**, as enacted by PL 1985, c. 782, is repealed.

13 **Sec. 4. 12 MRSA §§574 to 576** are enacted to read:

14 **§574. Permitted public use rights on intertidal land and submerged land**

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

20 **2. Recreational uses.** Unless expressly prohibited by statute or rule adopted by a
21 state agency charged with oversight of intertidal land, water-related recreational uses of
22 intertidal land, including, but not limited to, playing in the water, swimming, snorkeling
23 and using skim, surf and paddle boards, are permitted. Additionally, on exposed sand
24 areas of intertidal land, permitted recreational uses include, but are not limited to, sitting,
25 walking, running, reading, sunbathing, picnicking, the throwing of balls and other toys,
26 gathering shells and sea glass and the building of sandcastles. All recreational uses are
27 subject to laws or rules adopted by the Legislature or a state agency charged with
28 protecting the public health, safety and general welfare.

29 **3. Commercial uses.** Unless expressly prohibited by statute or rule adopted by a
30 state agency charged with oversight of intertidal land, commercial uses of intertidal land,
31 including, but not limited to, seaweed harvesting; aquaculture of fish, shellfish or other
32 marine organisms; the extension from the mainland of utility cables and pipelines to
33 service island communities and permitted offshore facilities; and the storage, rental and
34 sale of paddle boards and surf boards, kayaks, small boats and related marine equipment,
35 are permitted. All commercial uses are subject to licensing and use laws enacted by the
36 Legislature and rules adopted by a state agency charged with protecting the public health,
37 safety and general welfare.

38 **4. Submerged land uses.** Permitted historic, recreational and commercial uses of
39 intertidal land that extend into submerged land areas and overlying waters are not

1 prohibited by this fact alone, insofar as the uses do not interfere with public or private
2 uses and activities permitted on submerged land.

3 **§575. Limitation on public use rights on intertidal land and submerged land**

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

5 **1. Gather and remove.** Gather and remove in bulk from intertidal land or
6 submerged land without a valid license sand, soil, rocks, minerals, seaweed or living
7 marine organisms;

8 **2. Structure or improvement.** Interfere with or trespass on any structure or
9 improvement erected or maintained on intertidal land or submerged land in accordance
10 with state law;

11 **3. Refuse or waste materials.** Deposit or leave any refuse or waste materials on
12 intertidal land or submerged land or in overlying waters;

13 **4. Private property.** Trespass on private property that is above the mean high tide
14 line;

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

18 **6. Motorized vehicle.** Operate or park any motorized vehicle on intertidal land
19 except to perform emergency or rescue service.

20 **§576. Miscellaneous provisions**

21 **1. State powers.** The State may seek by gift or purchase to increase points of access
22 to intertidal land. The State may provide or increase parking spaces, toilet facilities,
23 lifeguard services and other amenities to facilitate public use of intertidal land. The
24 Legislature and state agencies may set safety standards for various uses and reasonable
25 hours of operation for intertidal land generally and beach areas in particular and settle
26 conflicts that arise between competing intertidal land users.

27 **2. Municipal powers.** Municipalities may seek by gift or purchase to increase
28 points of access to intertidal land. Municipalities within which intertidal land is located
29 may provide or increase parking spaces, toilet facilities, lifeguard services and other
30 amenities to facilitate public use of intertidal land. Municipalities may exercise their
31 police powers to adopt ordinances to prevent and resolve disturbances on and set
32 reasonable hours of operation for intertidal land generally and beach areas in particular.
33 Municipal ordinances may not override or conflict with intertidal land use laws enacted
34 by the Legislature or rules adopted by a state agency charged with protecting the public
35 health, safety and general welfare. Municipalities may not prohibit intertidal land uses
36 under section 574.

37 **Sec. 5. Maine Revised Statutes headnote amended; revision clause.** In the
38 Maine Revised Statutes, Title 12, chapter 202-A, in the chapter headnote, the words "the

1 public trust in intertidal land" are amended to read "the intertidal land expanded use rights
2 act" and the Revisor of Statutes shall implement this revision when updating, publishing
3 or republishing the statutes.

4 **SUMMARY**

5 This bill addresses public uses of intertidal land by substantially amending the
6 existing laws on intertidal land. It revises the headnote of the chapter to reflect the
7 recognition of expanded uses of intertidal land.

8 The bill replaces most of the legislative findings and purpose language to recite
9 historic uses and note that the evolving public uses of intertidal land confer both
10 economic and general welfare benefits to the citizens of this State. It specifies that there
11 is no difference in whether the State is acting to discharge its public trust duties with
12 respect to intertidal land or exercising its police power to protect the public health, safety
13 and general welfare.

14 The bill defines "intertidal land," which is consistent with the definition in statute,
15 and "submerged land."

16 The bill delineates permitted uses of intertidal land, identifying historic, recreational
17 and commercial uses. All are subject to state laws and rules, and commercial uses may
18 be subject to licensing, as well.

19 The bill also limits some activities on intertidal land.

20 The bill recognizes the power of the State and municipal police powers that may be
21 used to improve and facilitate uses of intertidal land.