

129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1388

S.P. 432

In Senate, March 26, 2019

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

(EMERGENCY)

Reference to the Committee on Judiciary suggested and ordered printed.

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DAREK M. GRANT Secretary of the Senate

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

- 1 **Emergency preamble. Whereas,** acts and resolves of the Legislature do not 2 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
- 6 **Whereas,** it is unknown whether the State's claim of title to its intertidal lands will 7 be fully vindicated by pending decisions of the Law Court; and
- 8 Whereas, the State's claim of title to its intertidal lands is rooted in part in 9 provisions and doctrines within the United States Constitution, federal laws and United 10 States Supreme Court case law; and
- 11 **Whereas,** a final determination of the scope and meaning of these federal 12 provisions, doctrines, laws and cases that leads to the conclusion that Maine in fact holds 13 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

Certiorari review by the United States Supreme Court of 24 Sec. 1. unresolved federal questions related to intertidal lands in Maine. Resolved: 25 That, inasmuch as prior Law Court cases have ceded title to all of this State's intertidal 26 27 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 28 constitutional provisions and doctrines, congressional enactments and United States 29 Supreme Court cases, was not sought, and recognizing that the United States Supreme 30 Court is the final arbiter of the scope and meaning of all federally rooted claims of land 31 ownership, the Attorney General shall seek United States Supreme Court review of any 32 33 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 34 range of federally rooted claims of title by the State to its intertidal lands but also the 35 failure of the State's present judge-made intertidal land law to adhere to provisions of the 36 37 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 38 39 government.

Sec. 2. An alternative to certiorari review by the United States Supreme 1 Court of a future Law Court decision that does not fully vindicate the State's 2 claim of title to its intertidal lands. Resolved: That, if present law of this State 3 ceding title to all of the State's intertidal lands to upland owners remains in place without 4 an opportunity within 2 years after the effective date of this resolve for certiorari review 5 by the United States Supreme Court of federal constitutional provisions and doctrines, 6 congressional enactments and United States Supreme Court cases that leads to the 7 conclusion that the State does in fact hold title to its intertidal lands, the Attorney General 8 shall commence in federal court an original proceeding in the form of a declaratory 9 judgment action, asserting the State's claim of title to its intertidal lands based on these 10 ignored federal grounds, and pointing out that the State's present judge-made intertidal 11 lands law fails to adhere to provisions of the Constitution of Maine requiring 12 reasonableness in the alienation of trust property and imposing separation of powers 13 limitations on the judicial branch of this State's government. 14

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

SUMMARY

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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.