

RE: LD 1953 An Act to Ensure Public Access to Conservation Land by Providing Protections from Liability to Landowners Conservation

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Under existing Maine law, landowners who grant public access for recreational or harvesting activities receive certain statutory protections from liability. 14 M.R.S. § 159-A (Maine's Recreational Use Statute). This bill—LD 1953—provides that when the grant of access is perpetual, so too are those liability protections. This legislation uses a doctrine of “vested rights” arising from the Maine State Constitution, as recently described by two Law Court decisions, and it furthers Maine's unique and important “open lands tradition.”

Maine has a long tradition of permissive public recreational access to private lands. Maine's Law Court recognizes and relies on it for common law doctrines that protect landowners who honor it:

We have long recognized the rebuttable presumption that public recreational uses are undertaken with the permission of the landowner. The presumption of permission derives from the “open lands tradition” that Maine shares with a minority of other states. This tradition recognizes the State's desire to encourage the hunting, hiking, and other outdoor activities for which Maine is celebrated and on which much of Maine's economy is based.

Almeder v. Town of Kennebunkport, 2014 ME 139, ¶¶ 29-30, 106 A.3d 1099, *as corrected* (Apr. 16, 2015) (internal citations omitted). The Legislature also recognizes and protects this tradition:

The Legislature finds that Maine is blessed with an abundance of natural resources unique to the northeastern United States; that these natural resources provide Maine residents and visitors to the State with an unparalleled diversity of outdoor recreation opportunities during all seasons of the year and a quality of life unmatched in this nation; that the continued availability of public access to these recreation opportunities and the protection of the scenic and natural environment are essential for preserving the State's high quality of life;

...

The Legislature declares that the future social and economic well-being of the citizens of this State depends upon maintaining the quality and availability of natural areas for recreation, hunting and fishing, conservation, wildlife habitat, vital ecologic functions and scenic beauty and that the State, as the public's trustee, has a responsibility and a duty to pursue an aggressive and coordinated policy to assure that this Maine heritage is passed on to future generations.

5 M.R.S. § 6200 (Land for Maine's Future Program). The Legislature similarly directs that a "landowner relations program" within the Department of Inland Fisheries and Wildlife must:

- (1) Encourage landowners to allow outdoor recreationists access to their property to hunt, fish or engage in other outdoor recreational pursuits;
- (2) Foster good relationships between landowners and outdoor recreationists; and
- (3) Promote high standards of courtesy, respect and responsibility by outdoor recreationists in their relations with landowners.

12 M.R.S. § 10108 (Landowner Relations Program). And Maine's Recreational Use Statute serves as a keystone incentive to encourage recreational access over private lands. 14 M.R.S. § 159-A. Indeed, if the Legislature were ever to repeal these liability protections, many private landowners would likely close their lands and roads to the public, undercutting a central pillar in this "open lands tradition."

The possibility of losing these protections through a future statutory amendment can create a conundrum for private landowners who are considering a grant of perpetual public access to their private lands. In the present they are protected by the current version of Maine's Recreational Use Statute, but a perpetual grant would forever foreclose their future ability to close their lands for recreational uses, even if a future legislature decides to repeal these liability protections.

Two recent Law Court decisions provide a roadmap for a legislative solution to this conundrum. In the first, the Law Court held that a "vested rights doctrine" arises from Sections 1 and 6 of the Maine Constitution, which can protect private landowners who act in good-faith reliance on legislative privileges from certain future statutory changes. *NECEC Transmission LLC v. Bureau of Parks & Lands*, 2022 ME 48, ¶¶ 42-47, 281 A.3d 618, *as revised* (Sept. 8, 2022). In the second, it held that a "freedom from liability" created by statute can be "a substantive right" protected by this vested rights doctrine. *Dupuis v. Roman Cath. Bishop of Portland*, 2025 ME 6, ¶¶ 28, 47-52, 331 A.3d 294.

Under this new statutory provision, a landowner acts in good-faith reliance on a legislative privilege (the freedom from liability) by granting perpetual public access (forever surrendering its right to exclude the public) and in exchange vests the "substantive right" of the "freedom from liability" that existed at the time of the perpetual grant. Once a perpetual right of access is granted and a vested right created, a future legislature will not be able to retroactively impair that vested right (even if it decides to prospectively change the statute for landowners who have not vested such rights through a perpetual grant). Thus, this new statute follows a natural extension of a roadmap laid out by the Law Court's recent vested rights jurisprudence, and it furthers the "open lands tradition" that has been recognized by the Courts and the Legislature alike.