

§1865. Filled submerged and intertidal lands

1. Legislative intent; purpose. The Legislature finds that the ownership of certain areas along the State's coast and great ponds is uncertain because portions of the submerged and intertidal lands have been filled in so as now not to be subject to tidal action or below water. These lands were filled prior to the enactment of Public Law 1975, chapter 287, the Submerged Lands Act, as recodified by Public Law 1979, chapter 545. It appears that prior to the enactment of the Submerged Lands Act, and to some degree afterwards, these filled-in portions of the submerged or intertidal lands have been sold, leased, taxed and otherwise treated in good faith by municipalities and private citizens as if they were owned in fee by private parties. Due to the lack of readily available documentation of the natural low-water and high-water marks in most areas along the coast and great ponds, the process of setting the boundaries between submerged or intertidal lands and the upland would consume enormous time and expense for the State and the private parties.

The Legislature recognizes that the submerged lands are owned by the State for the benefit of the public. These lands are impressed with a public trust. This ownership and public trust is derived from the Massachusetts Colonial Ordinance of 1641-1647. As a result, submerged land is not, like ordinary private land, held in fee simple absolute but is impressed with the public trust, which gives the public's representatives an interest and responsibility in its development.

The Legislature finds that those portions of the submerged and intertidal lands that have been filled prior to October 1, 1975, the date the Submerged Lands Act was effective, are substantially valueless for trust uses and such lands may be disposed of without impairment of the public trust in what remains. The public benefit will be promoted by clarifying the status of real estate titles to such filled lands, thereby permitting full use and development.

[PL 1997, c. 678, §13 (NEW).]

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

A. "Filled land" means portions of the submerged and intertidal lands that have been rendered by human activity to be no longer subject to tidal action or below the natural low-water mark on October 1, 1975. [PL 1997, c. 678, §13 (NEW).]

B. "Intertidal land" means all land affected by the tides between natural high-water mark and either 100 rods seaward therefrom or the natural low-water mark, whichever is closer to the natural high-water mark. [PL 1997, c. 678, §13 (NEW).]

C. "Person" means individuals, partnerships, corporations and other private legal entities, but does not include the State and its political or government subdivisions or the Federal Government. [PL 1997, c. 678, §13 (NEW).]

D. "Submerged land" means all land affected by the tides seaward of the natural low-water mark or 100 rods from the natural high-water mark, whichever is closer to natural high-water mark and all land below natural low-water mark under great ponds. [PL 1997, c. 678, §13 (NEW).]

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3. Declaration of clear title. Titles to properties and lands that once were or may have been submerged or intertidal lands subject to the State's ownership in public trust that were filled by October 1, 1975 are declared and released to the owners of any such filled lands by the State free of any claimed ownership in public trust to the extent the areas of these properties and lands were not submerged or intertidal lands on that date.

[PL 1997, c. 678, §13 (NEW).]

4. Confirmation. Any person claiming an interest in such land may seek confirmation from the bureau that particular land is filled land and receive a declaration that may be filed in the appropriate

registry of deeds. Such confirmation may not be construed to create any rights of ownership in any person per se but is declaratory of the status of the land as to whether it had been filled by October 1, 1975. The application for confirmation must be filed on a form prescribed by the bureau, which must contain the following information:

- A. Name and address of applicant; [PL 1997, c. 678, §13 (NEW).]
- B. An accurate legal description of the filled land, proof that the land was filled by October 1, 1975 and sufficient details, such as a survey by a registered land surveyor, to locate the filled land on a map of general acceptability; [PL 1997, c. 678, §13 (NEW).]
- C. The acreage of the filled land; [PL 1997, c. 678, §13 (NEW).]
- D. The date acquired; [PL 1997, c. 678, §13 (NEW).]
- E. Evidence that written notice of the application for confirmation has been sent to any other owners of record; and [PL 1997, c. 678, §13 (NEW).]
- F. Other information necessary for the purposes of this section. [PL 1997, c. 678, §13 (NEW).]

A filing fee of \$50 must accompany each application to cover administrative costs. The money must be deposited and disbursed in accordance with section 1849 to accomplish the purposes of this section. [PL 1997, c. 678, §13 (NEW); PL 2011, c. 657, Pt. W, §7 (REV); PL 2013, c. 405, Pt. A, §24 (REV).]

5. Filing. The following provisions apply to filing.

A. The application may be filed with the bureau at any time. [PL 1997, c. 678, §13 (NEW); PL 2011, c. 657, Pt. W, §7 (REV); PL 2013, c. 405, Pt. A, §24 (REV).]

B. If the applicant demonstrates that the land is filled land as defined in subsection 2, paragraph A, the director shall issue a declaration to that effect. The director shall respond to the application within 30 days of the date the application is received by the director. [PL 1997, c. 678, §13 (NEW).]

[PL 1997, c. 678, §13 (NEW); PL 2011, c. 657, Pt. W, §7 (REV); PL 2013, c. 405, Pt. A, §24 (REV).]

6. Termination of leases. Any leases entered into by the director pursuant to section 1862 for filled land are terminated. Lessees may not be reimbursed for rental paid under such leases. [PL 1997, c. 678, §13 (NEW).]

7. Operation of this section; retroactive date. This section does not create a cause of action on behalf of any person against the State for damages or otherwise arising out of state ownership of lands before December 25, 1981. A declaration of confirmation by the bureau pursuant to subsection 4 does not constitute a decision by the State as to which claimant, if any, may have title, and the State, its officers, agents and employees are not liable to any person by reason of having made or having refused to make such a declaration. Failure to apply for or receive confirmation or a declaration under subsection 4 does not affect any rights granted or released by this section. This section may not be construed to affect the rules of law otherwise in force relating to accretion or reliction of filled or other lands along the great ponds or the coast, nor to either convey or release rights or interest acquired by the State in filled lands by gift, purchase or the power of eminent domain or to affect any obligations, rights or liabilities created by the operation of Title 38, sections 480-B to 480-F, 480-Q and 480-R or by permits issued under those sections. This section is retroactive to October 1, 1975. [PL 1997, c. 678, §13 (NEW); PL 2011, c. 657, Pt. W, §7 (REV); PL 2013, c. 405, Pt. A, §24 (REV).]

SECTION HISTORY

PL 1997, c. 678, §13 (NEW). PL 2011, c. 657, Pt. W, §7 (REV). PL 2013, c. 405, Pt. A, §24 (REV).

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