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An Act To Transfer All Registry of Deeds and Probate Functions to the Secretary of State and Courts

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

PART A

Sec. A-1. 33 MRSA c. 11, sub-c. 1, as amended, is repealed.

Sec. A-2. 33 MRSA §651, as repealed and replaced by PL 2003, c. 55, §1, is amended to read:

§ 651. Records; index

The records and indexes in ~~each registry office~~ the office of the Secretary of State must be made and kept for public inspection on at least one of the following media: white, acid-free paper, microfilm, microfiche, or digital image stored on magnetic or optical media. ~~The register office of the Secretary of State~~ shall make an alphabetical index to the records without charge to the county so that the same surnames are recorded together and shall show in addition to the names of the parties and the nature of the instrument, the date of the instrument, the date of its record and the name of the city, town or unincorporated place where the land conveyed is situated. As often as every 10 years ~~the register office of the Secretary of State~~ shall revise and consolidate the index in such manner that all deeds recorded since the last revision of the index are indexed so that the same surnames appear together and all names are in alphabetical order. The revised and consolidated index must contain all data as to each and every deed or other instrument referred to in this section. If it becomes necessary to revise, renew or replace any index, the new index must be made in conformity with this section.

When the ~~register of deeds~~ office of the Secretary of State is required by law or common practice to make a note in the margin of a record, it is determined sufficient if the note is made to the index in such a fashion that the note becomes a permanent part of the indexing of the record to which the marginal note is required to be made.

The ~~register~~ office of the Secretary of State shall prepare, or have prepared, a microfilm record of each page of every instrument, plan or other document recorded in the ~~registry~~ office. The microfilm record made must be stored in a fireproof area. When original record books or plans are considered by the ~~register~~ Secretary of State to be in a condition that warrants withdrawal from regular use, the ~~register~~ Secretary of State may make a true copy of the contents of the record or may provide suitable means for reading the microfilm, microfiche or digital image stored on magnetic or optical media of the instruments withdrawn. The records and certified copies made either from the true copy or from images stored as provided in this section must be received in all courts of law with the same legal effect as those contained in the original.

Sec. A-3. 33 MRSA §651-A, as amended by PL 1993, c. 230, §1, is further amended to read:

§ 651-A. Grantor, grantee names; form of indexing

No instrument executed on or after October 1, 1983, may be accepted by ~~a register of deeds~~the office of the Secretary of State for recording unless beneath the signature of the grantor, grantee, if it appears on the instrument, and the person taking the acknowledgement, the name of each signer is typed or printed. Names used for indexing must be indexed as typed or printed under each signature. A name may be typed or printed under a signature at the ~~registry of deeds~~office of the Secretary of State by the person bringing the instrument to the ~~registry~~office of the Secretary of State, as long as the name is typed or printed on the instrument prior to the certification on the instrument under section 653 of the time when the instrument was received. The ~~register of deeds~~office of the Secretary of State may return documents that are not legible for recording and archival purposes.

Sec. A-4. 33 MRSA §652, first ¶, as repealed and replaced by PL 1991, c. 497, §1, is amended to read:

The ~~county commissioners~~office of the Secretary of State shall provide, ~~at the expense of the several counties,~~ suitable storage for plans with a minimum size of 12 by 18 and a maximum of 24 by 36 inches in dimension, for the preservation of such plans.

Sec. A-5. 33 MRSA §652, sub-§4, as enacted by PL 1991, c. 497, §1, is amended to read:

4. Recording information. Provide a space for recording the county, date, time, plan book and page or file number and ~~register~~the Secretary of State's attest; and

Sec. A-6. 33 MRSA §652, 2nd ¶, as amended by PL 2003, c. 55, §2, is further amended to read:

Original plans must be recorded with a paper copy. The ~~register~~office of the Secretary of State shall permanently file the original and maintain a copy for public inspection in at least one of the following media: paper, microfilm, microfiche or digital image stored on magnetic or optical media. Suitable arrangements must be made for the preserving of original plans while affording the public reasonable opportunity to examine either the original or a reproduction. No additional fee is required for recording the copy. ~~Each register~~The office of the Secretary of State shall maintain an index of all plans on records in the ~~register's office~~office of the Secretary of State.

Sec. A-7. 33 MRSA §652, last ¶, as enacted by PL 1991, c. 497, §1, is amended to read:

The ~~several registers~~office of the Secretary of State shall establish, and thereafter adhere to, reasonable standards for the implementation of reproducing copies of original plans as recorded. Reproduction must be on a scale of one to one and must be accomplished with the least possible error and distortion. Methods of reproduction must be to standards in keeping with accepted engineering and survey practices.

Sec. A-8. 33 MRSA §653, as repealed and replaced by PL 2003, c. 55, §3, is amended to read:

§ 653. Time of recording; verification

~~A register~~The office of the Secretary of State shall, at the time of receiving a deed or instrument for record, certify on the deed or instrument the day and the hour and minute when it was received and the book number and page number where the document is located. If the deed or instrument does not have sufficient room on the page or pages for the location of the recording information so that the

~~registeroffice of the Secretary of State~~ is required to add an additional page for the placement of the recording information, the ~~registeroffice of the Secretary of State~~ may charge in addition to any other fees allowed by law a fee of \$2 for each page the ~~registeroffice of the Secretary of State~~ is required to add. An instrument is considered recorded at the time when it was received and that time must be entered on the record. The ~~registeroffice of the Secretary of State~~ shall enter that time, the names of the grantor and grantee and the name of the town or unincorporated place as shown by the instrument in which the property affected is located in a record kept for that purpose and open to inspection in business hours. The ~~registeroffice of the Secretary of State~~ may not permit a deed or instrument for the conveyance of real estate to be altered, amended or withdrawn until it is fully recorded and examined. The record must be verified as a true record of the original document by comparing the indexing record and the copy kept for public inspection, as described in section 651, to the original document before the original document is allowed to leave the ~~registry officeoffice of the Secretary of State~~.

Sec. A-9. 33 MRSA §654, as amended by PL 2003, c. 55, §4, is further amended to read:

§ 654. Miscellaneous records

~~Registers shall~~The office of the Secretary of State is designated to receive and record all certificates in equitable proceedings, copies of judgments and decrees certified by the clerk of courts in the county where the complaint is pending or the judgment or decree is rendered, certified copies of the proceedings of any court, corporation, municipal body or other tribunal through or by which the right of eminent domain has been or may be exercised to affect the title to real estate, copies of portions of wills devising real estate situated in their respective counties or districts and all other instruments that they are by law required to record. ~~They shall~~The office of the Secretary of State is designated to receive all copies of seizures on execution and special attachments made and attested by any officer of real property ~~situatesituated~~ in their respective counties or districts and certify on them the time when they are received, and certificates of advertised stallions and copies of processes against domestic corporations filed for service by officers in the ~~registryoffice of the Secretary of State~~, keep them on file for the inspection of parties interested and enter them in suitable records properly indexed.

Sec. A-10. 33 MRSA §655, as amended by PL 1973, c. 28, §14, is further amended to read:

§ 655. Town records to State Archivist for safekeeping

All persons, other than ~~registers of deeds~~the Secretary of State, having possession of or owning the records of the original proprietors of any town or plantation in this State, may deliver the same to the State Archivist for preservation and safekeeping.

Sec. A-11. 33 MRSA §657 is amended to read:

§ 657. Filing of subdivision plats; penalty

Whoever lots or causes to be lotted for the purpose of sale any tract of land shall, before making any deed of such land or any part thereof, file with the ~~register of deeds for the county or registry district wherein such land is situated~~office of the Secretary of State an accurate plan of such property, which plan ~~shall~~must give such courses, angles and distances as will be sufficient to enable a skillful surveyor to locate any lot shown thereby. If such party, after request by any interested party or by the ~~register of~~

~~deedsoffice of the Secretary of State, fails to comply with this section, he shall be~~ the party is liable to a penalty of not more than \$50, to be recovered in a civil action in the name of the register of deeds~~office of the Secretary of State for the benefit of the county.~~

Sec. A-12. 33 MRSA §658 is amended to read:

§ 658. Recording of releases or waivers of conditions

Whenever land has been lotted in accordance with section 657 and lots described therein have been conveyed by deeds of conveyance containing one or more uniform conditions ~~which~~that restrict the full and unqualified enjoyment of the right or estate granted, the grantor may subsequently by a writing under seal and by the grantor signed and acknowledged and recorded in the ~~registry of deeds for the county or registry district in which the land lies~~office of the Secretary of State, release and waive one or more of such conditions by reference to lot numbers, block numbers, section numbers or other apt description. Such release and waiver need not state a consideration and need not contain the names of the grantees or present owners of the respective parcels. Such release and waiver shall thereafter accrue to the respective individual benefit of the owners of the parcels described in such release and waiver and may be used by them as a bar to any action by the said grantor for breach of any such condition thus released and waived. Such writing ~~shall~~may not in any way affect or impair like conditions in respect to other deeds of lots shown on such plans and not included in such release and waiver, and such writing ~~shall~~may not in any way affect or impair other conditions contained in deeds of the parcels referred to in such release and waiver.

Sec. A-13. 33 MRSA §659 is amended to read:

§ 659. Duplicates of plans in court files

Whenever in the settlement of any disputed line or in the division of any estate any plans are made for filing in the office of the clerk of courts ~~or the register of probate~~, duplicate plans ~~shall~~must in all cases be filed in the ~~registry of deeds~~office of the Secretary of State.

Sec. A-14. 33 MRSA §660, as amended by PL 2003, c. 55, §6, is further amended to read:

§ 660. Plans of townships; copies; filing and indexing

The county commissioners shall, at the expense of their respective counties, procure such plans of the townships in their counties as may be in existence. If the original plans are not in existence or can not be had at a reasonable price, they shall procure copies of the most authentic plans known to exist. All copies must be on the best quality of linen paper backed with cloth or polyester film with archival photographic image. Suitable filing cases must be provided in ~~each registry of deeds~~the office of the Secretary of State for the reception and preservation of the plans and a suitable index of the plans must be made, having at least both alphabetical and chronological arrangement, and must be revised whenever new plans for recording are received.

Sec. A-15. 33 MRSA §661 is amended to read:

§ 661. Plans deemed of interest to county

The county commissioners may at their discretion procure such plans, other than township plans, of properties within their counties, either originals or copies, as they deem for the interest of their counties to have preserved on the files of the ~~registry of deeds office of the Secretary of State~~. This section ~~shall~~ may not be construed to allow the purchase of any plan ~~which~~ that the proprietor of any estate is required by law to file with the ~~register of deeds office of the Secretary of State~~.

Sec. A-16. 33 MRSA §662, as amended by PL 2003, c. 55, §7, is further amended to read:

§ 662. Plans showing allotment of lands in cities and towns

The municipal officers of a city or town may, and upon the written request of 3 or more taxpayers of the city or town shall, cause any plans in the possession of the city or town or otherwise available, showing the allotment of lands in the city or town, to be recorded in the ~~registry of deeds in the county or registry district in which any such city or town is situated~~ office of the Secretary of State. The plans must be recorded and kept in accordance with the provisions of section 652.

Sec. A-17. 33 MRSA §663 is amended to read:

§ 663. Copies of transfers of lands in unorganized territory sent to State Tax Assessor

In each county containing lands in unorganized territory, so called, the ~~register of deeds office of the Secretary of State~~ shall transmit to the State Tax Assessor certified copies of the record of all transfers of lands in unorganized territory made after the 20th day of March, 1907, within 10 days after such record is made. Such copies ~~shall~~ must be placed on file and retained for future reference by the State Tax Assessor.

Sec. A-18. 33 MRSA §665, as amended by PL 1981, c. 279, §§23 and 23-A, is further amended to read:

§ 665. Farm owner may name lands for filing and recording

The owner of any farm lands may designate a specific name for such lands and the said name together with a description of said farm lands according to the latest authentic survey thereof may be filed with the ~~register of deeds of the county wherein the said lands or a part thereof are situated~~ office of the Secretary of State. The name together with the description of the lands ~~shall~~ must be recorded by the ~~register of deeds office of the Secretary of State~~ under section 651. The ~~register of deeds office of the Secretary of State~~ shall be paid the fee set in section 751. No 2 names so designated and recorded may be alike in the same county.

Sec. A-19. 33 MRSA §666 is amended to read:

§ 666. Transfer of named farm lands

Whenever any owner of farm lands, the name of which has been recorded as provided in section 665, transfers by deed or otherwise the whole of such farm lands; such transfer may include the registered name thereof. If the owner ~~shall transfer~~ transfers only a portion of such farm lands, then the registered name thereof ~~shall~~ is not be transferred to the purchaser, unless so stated in the deed of conveyance.

Sec. A-20. 33 MRSA §669, as enacted by PL 1971, c. 68, is amended to read:

§ 669. Copies of bankruptcy orders and decrees

At any time after a petition in bankruptcy is filed, or a decree of adjudication or an order approving the trustee's bond is made, pursuant to the Federal Bankruptcy Act of 1898, as amended, the bankrupt, trustee, receiver, custodian, referee or any creditor may record a certified copy of such petition, with the schedules omitted, or of such decree or order in the ~~registry of deeds for any county or district wherein the bankrupt owns or has an interest in any land~~office of the Secretary of State.

Sec. A-21. 33 MRSA §670, as enacted by PL 1979, c. 179, is amended to read:

§ 670. Facsimile signature

A facsimile of the signature of the ~~register or deputy register of deeds~~Secretary of State imprinted at his~~the~~ Secretary of State's direction upon any deed or other instrument that is customarily recorded at the ~~registry of deeds~~office of the Secretary of State, including plans and the like, shall ~~have~~has the same validity as his~~the~~ Secretary of State's signature.

Sec. A-22. 33 MRSA c. 11, sub-c. 3, as amended, is repealed.

Sec. A-23. 33 MRSA §751, first ¶, as amended by PL 1993, c. 560, §3, is further amended to read:

Except as provided in any other provision of law, ~~registers of deeds shall~~the office of the Secretary of State is entitled to receive the following fees for:

Sec. A-24. 33 MRSA §751, sub-§15, as repealed and replaced by PL 1971, c. 321, is amended to read:

15. When payable. Fees provided by this section shall~~must~~ be paid when the instrument is offered for record, except that fees payable by the State shall be paid monthly by the department or agencies requesting the recording, upon rendition of bills by the ~~register of deeds~~office of the Secretary of State. Said bills shall~~must~~ be paid within 10 days of receipt of same by the department or agencies.

Sec. A-25. 33 MRSA §752, as amended by PL 2005, c. 584, §§1 and 2, is further amended to read:

§ 752. Records preservation surcharge

1. Surcharge. In addition to any other fees required by law, a ~~register of deeds~~the office of the Secretary of State may collect a surcharge of \$3 per document for all records that are recorded in the ~~registry of deeds~~office of the Secretary of State, except those recorded by agencies of State Government and municipalities.

2. Account. The surcharge imposed in subsection 1 must be ~~transferred to the county treasurer who shall deposit it~~deposited in a separate nonlapsing account within 30 days of receipt. ~~Money in the account is not available for use as a general revenue of the county. Interest earned on the account must be credited to the account.~~

3. Expenditures from account. The money in the account established in subsection 2 must be used for the restoration, re-creation and preservation of the records recorded in the office of the ~~register of deeds~~Secretary of State, including preservation by creation of a digital image stored on magnetic or optical media. The money may not be used for initial recording of documents.

5. Annual report. ~~The register of deeds for each county~~office of the Secretary of State shall report annually to the joint standing committee of the Legislature having jurisdiction over state and local government matters on the amount of surcharge funds raised and expended and the use of those funds. ~~The registers of deeds may jointly prepare and submit the report required under this subsection, as long as the required information is separately described for each county.~~

6. Misappropriation of funds; penalty. ~~Any county that uses funds from the records preservation surcharge account established in subsection 2 for any purpose that is not in accordance with the standards established in subsection 3 commits a civil violation for which a fine of \$100 per day from the date of the withdrawal to the date the money is restored to the account must be adjudged. Fines must be paid out of the county budget and be deposited in the account established in subsection 2.~~

Sec. A-26. Effective date. This Part takes effect January 1, 2009.

PART B

Sec. B-1. 18-A MRSA §1-501, as amended by PL 1995, c. 683, §2, is repealed.

Sec. B-2. 18-A MRSA §1-502, as amended by PL 1981, c. 40, §2, is repealed.

Sec. B-3. 18-A MRSA §1-503, as amended by PL 1993, c. 148, §2, is further amended to read:

§ 1-503. Duties; records; binding of papers

~~Registers of probate have the care and custody of all files, papers and books belonging to the probate office and~~The office of the clerk of courts shall duly record all wills probated formally or informally, letters of authority of a personal representative, guardianship or conservatorship issued, bonds approved, accounts filed or allowed, all informal applications and findings, all petitions, decrees, orders or judgments of the judge, including all petitions, decrees or orders relating to adoptions and changes of names and other matters, as the judge directs. ~~Registers of probate~~The office of the clerk of courts shall keep a docket of all probate cases and, under the appropriate heading of each case, make entries of each motion, order, decree and proceeding so that at all times the docket shows the exact condition of each case. ~~Any register~~The office of the clerk of courts may act as an auditor of accounts when requested to do so by the judge and the judge's decision is final unless appeal is taken in the same manner as other probate appeals. The records may be attested by the volume and it is deemed to be a sufficient attestation of those records when each volume bears the attest with the written signature of the register or other person authorized by law to attest those records. ~~The registers of probate~~office of the clerk of courts may bind in volumes of convenient size original inventories and accounts filed in their respective offices and, when bound and indexed, those inventories and accounts are deemed to be recorded in all cases when the law requires a record to be made and no further record is required.

~~A facsimile of the signature of the register of probate or deputy register of probate imprinted at his direction upon any instrument, certification or copy which is customarily certified by him or recorded in the probate office, shall have the same validity as his signature.~~

Sec. B-4. 18-A MRSA §1-504, as enacted by PL 1979, c. 540, §1, is amended to read:

§ 1-504. Certification of wills, appointments of personal representatives and elective share petitions involving real estate

Within 30 days after a will has been proved or allowed, or an appointment of a personal representative has been made upon an assumption of intestate status and where the petition for the appointment indicates that the deceased owned real estate, or a petition for an elective share has been filed where the will or the petition upon which appointment of a personal representative has been granted indicates that the deceased owned real estate, ~~the register~~office of the clerk of courts shall make out and certify to ~~the register of deeds in the county where any affected real estate is situated~~office of the Secretary of State (1) a true copy of so much of the will as devises real estate, (2) an abstract of the appointment of the personal representative, or (3) a true copy or abstract of the petition for an elective share, as the case may be. Each certification ~~shall~~must include a description of the real estate, so far as it can be furnished from the probated will or the petition upon which the appointment was made, and the name of the decedent and of the devisees or heirs. In the case of a will, the certification ~~shall~~must also set forth the date of the allowance of the will and designate whether it was probated formally or informally. In the case of the formal probate of a will that was previously informally probated, and of an informally probated will that was subsequently denied probate in formal proceedings, ~~the register of probate~~office of the clerk of courts shall certify such formal probate or formal denial of probate to ~~the register of deeds~~office of the Secretary of State to which the prior informally probated will was certified, setting forth the date of the formal probate or denial. ~~The register of deeds~~office of the Secretary of Stste receiving such copy or certification shall forthwith file the same, minuting thereon the time of the reception thereof, and record it in the same manner as a deed of real estate.

Sec. B-5. 18-A MRSA §1-505, as amended by PL 2003, c. 14, §1, is further amended to read:

§ 1-505. Notice to beneficiaries; furnishing of copies

~~Registers of probate~~The office of the clerk of courts shall, within 30 days after any will is probated, notify by mail all beneficiaries under that will that devises have been made to them, stating the name of the testator and the name of the personal representative, if one has been appointed at the time this notification is sent. Beneficiaries in a will must, upon application to ~~the register of probate~~office of the clerk of courts, be furnished with a copy of the probated will upon payment of a fee of \$1 per page.

Sec. B-6. 18-A MRSA §1-506, as amended by PL 1987, c. 737, Pt. C, §§34 and 106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is repealed.

Sec. B-7. 18-A MRSA §1-507, as enacted by PL 1979, c. 540, §1, is repealed.

Sec. B-8. 18-A MRSA §1-508, as enacted by PL 1979, c. 540, §1, is repealed.

Sec. B-9. 18-A MRSA §1-509, as enacted by PL 1979, c. 540, §1, is repealed.

Sec. B-10. 18-A MRSA §1-510, as repealed and replaced by PL 2003, c. 452, Pt. J, §1 and affected by Pt. X, §2, is repealed.

Sec. B-11. 18-A MRSA §1-511, as enacted by PL 1979, c. 540, §1, is amended to read:

§ 1-511. Fees for approved blanks and forms

For all approved blanks, forms or schedule paper required in probate court proceedings, the ~~register~~office of the clerk of courts shall charge fees which shall be set by the register and approved by the ~~county commissioners~~, so as not to incur a loss to the county for such servicesoffice of the clerk of courts. Such fees shall be payable by the register to the county treasurer for the use and benefit of the county.

Sec. B-12. Effective date. This Part takes effect January 1, 2009.

PART C

Sec. C-1. Implementing legislation; register of deeds functions. The Joint Standing Committee on State and Local Government shall review those parts of the Maine Revised Statutes governing registers of deeds, including but not limited to Titles 11, 30-A and 33. The purpose of the review is to develop legislation to implement the transfer of the registry of deeds functions from the county to the Secretary of State and to correct any errors and inconsistencies in law that result from this Act. In developing the proposed legislation, the committee shall invite the advice and counsel of the Secretary of State and designees selected by the Secretary of State. By November 30, 2007, the Secretary of State shall submit the legislation developed pursuant to this section to the Second Regular Session of the 123rd Legislature.

Sec. C-2. Implementing legislation; register of probate functions. The Joint Standing Committee on State and Local Government shall review those parts of the Maine Revised Statutes governing registers of probate, including but not limited to Titles 4, 18-A and 30-A. The purpose of the review is to develop legislation to implement the transfer of the register of probate functions from the county to the office of the clerk of courts and to correct any errors and inconsistencies in law that result from this Act. In developing the proposed legislation, the committee shall invite the advice and counsel of the Chief Justice of the Supreme Judicial Court and designees selected by the Chief Justice. By November 30, 2007, the committee shall submit the legislation developed pursuant to this section to the Second Regular Session of the 123rd Legislature.

SUMMARY

The purpose of this bill is to transfer the functions of the county register of deeds offices to the Secretary of State, and to transfer the functions of the county registers of probate to the office of the clerk of courts as a first step toward greater regionalization of services.

PART A

This Part amends the Maine Revised Statutes, Title 33, chapter 11, which governs registers of deeds, to transfer the functions of the registers of deeds to the office of the Secretary of State.

PART B

This Part amends Title 18-A, Article 1, Part 5, which governs registers of probate, to transfer the functions of the registers of probate to the office of the clerk of courts.

PART C

This Part directs the Joint Standing Committee on State and Local Government, with the advice and counsel of the Secretary of State, to develop legislation to implement the transfer of the register of deeds functions from the county to the office of the Secretary of State. This Part also directs the Joint Standing Committee on State and Local Government, with the advice and counsel of the Chief Justice of the Supreme Judicial Court, to develop legislation to implement the transfer of the register of probate functions from the county to the office of clerk of courts.