

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1987

H. P. 2016 House of Representatives, February 16, 1982
Approved for introduction by the Legislative Council pursuant to
Joint Rule 26.

Referred to the Committee on Legal Affairs. Sent up for
concurrence and ordered printed

EDWIN H. PERT, Clerk

Presented by Representative M. Nelson of Portland.

Cosponsors: Senator Gill of Cumberland, Senator Conley of
Cumberland and Representative Thompson of South Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-TWO

**AN ACT Relating to the Board of Harbor
Commissioners and its Powers for the
Harbor of Portland.**

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

Sec. 1. Definitions. As used in this Act, the follow-
ing terms have the following meanings.

1. Branch. "Branch" means a license or certificate of
competency issued by the commission.

2. Commission. "Commission" means the Board of Harbor
Commissioners for Portland Harbor created under this
Act.

3. Docking Master. "Docking master" means any person
directing the mooring, docking and removing of vessels
for hire.

1 4. **Harbor.** "Harbor" means Portland Harbor.

2 5. **Harbor lines.** "Harbor lines" means the line mark-
3 ing the boundary of the harbor beyond which wharves and
4 other structures may not be extended.

5 6. **Pilot.** "Pilot" means any person taken on board a
6 vessel for the purpose of conducting it through the
7 entrance, approaches or any channel within the harbor.

8 7. **Portland Harbor.** "Portland Harbor" means the
9 entire harbor and tidal waters within the limits of
10 Portland Harbor, including the tidal waters of Fore
11 River, Back Cove and northeasterly along the shores of
12 the easterly side of the mouth of the Presumpscot River
13 to the Grand Trunk Railroad Company's bridge and above
14 the islands within the City of Portland; and also
15 southerly and easterly of the lines of the harbor, as
16 far as the jurisdiction of the Cities of Portland and
17 South Portland extend, including all channels and
18 entrances into the harbor, as far as the same are not
19 under the exclusive control of the United States, and
20 also including all coves, inlets and other parts where
21 the tide ebbs and flows, within the limits of those
22 cities.

23 8. **Vessel.** "Vessel" means any watercraft used or
24 capable of being used for transportation.

25 **Sec. 2. Commission established.** There is established
26 a Board of Harbor Commissioners for Portland Harbor, which
27 shall be an instrumentality of the State and is charged with
28 responsibility for the regulation of navigation and commerce
29 within Portland Harbor in accordance with the provisions of
30 this Act. The commission shall consist of 5 members and
31 shall have a quorum of 3 members. Two members of the commis-
32 sion shall be appointed by the City of Portland, and these
33 members shall be and continue to be residents of the City of
34 Portland during tenure. Two members of the commission shall
35 be appointed by the City of South Portland, and these mem-
36 bers shall be and continue to be residents of the City of
37 South Portland. One member of the commission, who shall be
38 a resident of either Portland or South Portland, shall be
39 appointed with the concurrence of both the City Councils of
40 Portland and South Portland. Each member shall serve for a
41 period of 3 years and until his successor is appointed and
42 qualified, except in the case of the 5th member who shall

1 not serve longer than 60 days after expiration of his term.
2 The City Councils of Portland and of South Portland shall,
3 immediately after this Act takes effect, or as soon there-
4 after as deemed advisable, meet separately and appoint the 2
5 members from each city who shall constitute the members of
6 the commission. Each council shall designate one member to
7 serve for a 3-year term and one member to serve a 2-year
8 term. The 2 City Councils shall concur in the appointment
9 of the 5th member of the commission, whose initial term
10 shall be for one year. Appointments thereafter shall be for
11 terms of 3 years, except in the case of a vacancy, which
12 shall be for the remainder of the unexpired term, so that
13 not more than 2 vacancies will ordinarily occur in any one
14 year. The 5 members appointed shall annually elect from
15 their own membership a chairman and a clerk, and may from
16 time to time adopt such procedural rules as are necessary
17 for the proper conduct of the business of the commission. A
18 member may be removed for cause, or upon a determination
19 that such member is not a resident of that city, by the
20 appointing council or, in the case of the 5th member, by
21 concurrence of the 2 councils.

22 The present members of the Board of Harbor Commission-
23 ers for Portland Harbor shall continue in office until such
24 time as a quorum of commissioners is appointed under this
25 Act, at which time their offices shall be abolished and the
26 term of each member shall be deemed to have terminated. The
27 powers of the Board of Harbor Commissioners and any rules
28 made by the commission in effect on the effective date of
29 this Act shall be deemed to continue in full force and
30 effect and be supplementary to this Act for a period of one
31 year thereafter, unless sooner displaced by a rule of the
32 commission adopted under this Act. The commission estab-
33 lished under this Act shall succeed to all assets and assume
34 all liabilities of the former Board of Harbor Commissioners.

35 **Sec. 3. Location of office; retention of docu-**
36 **ments.** The commission shall have an office in the City of
37 Portland or South Portland in which shall be kept all maps,
38 charts, plans and documents relating to the lands and waters
39 over which it has control. The present Board of Harbor Com-
40 missioners shall deliver to the commission created under
41 this Act such maps, charts, plans and documents now in the
42 custody of the commission relating to those waters and
43 lands. The commission shall adopt measures to preserve and
44 protect such maps, charts, plans and documents, which shall
45 be public records except as provided by law, under such

1 rules as the commission may adopt. The commission shall
2 make, or cause to be made, such further maps and plans for
3 the use of the harbor and the approaches thereto as it deems
4 proper. To accomplish that end, members of the commission
5 shall keep themselves informed of the present and probable
6 future requirements of shipping and other marine uses and as
7 to the best means which can be provided at that port for the
8 accommodation thereof. The commission may also investigate
9 and determine, so far as practicable, what improvements may
10 be made to the harbor to make it safer and more advantageous
11 for navigation and commerce. The commission may employ such
12 persons as it may from time to time deem necessary to assist
13 it in performing its duties, including, but not limited to,
14 the retention of legal counsel to advise the commission and
15 to aid in the enforcement of this Act.

16 **Sec. 4. Harbor lines.** The commission may from time to
17 time establish harbor lines over the whole, or any part, of
18 the waters and territory within its jurisdiction; and there-
19 after from time to time alter and modify the lines as in the
20 judgment of the commission changes in navigation may re-
21 quire.

22 **Sec. 5. Permits required.**

23 **1. Creation or maintenance of any obstruction.** The
24 creation and maintenance of any obstruction in any of the
25 navigable waters of the harbor, or in any part of the harbor
26 under the jurisdiction of the commission, except by the
27 United States, without first obtaining a written permit from
28 the commission, is prohibited. It is unlawful to enlarge or
29 extend any wharf heretofore built, build any wharf, pier,
30 dolphin, bulkhead or other structure, dump any stones or any
31 other material into any of the waters, or upon any part of
32 the flats, excavate any part of the harbor, fill in any part
33 of the harbor or modify the course, location or condition of
34 the water of the harbor without a permit from the commission
35 for such purpose.

36 **2. Operation as pilot.** No person may operate as a
37 pilot in Portland Harbor without a branch from the commis-
38 sion. The commission shall provide by rule for the number
39 of pilots to be given a branch for regular operation within
40 the waters and territory within its jurisdiction, which
41 number shall be sufficient to meet the needs of commerce and
42 navigational safety, and shall prescribe the form of a writ-
43 ten application, the method of investigation or examina-

1 tion, or both, of the qualifications of each applicant and
2 the standards for the branch. Branches shall be granted for
3 terms of 5 years from the date of issuance unless sooner
4 terminated. Such branches may be granted subject to such
5 reasonable conditions as the commission deems necessary for
6 navigational safety and for the convenience of the public
7 and commerce. The commission may fix and establish by rule
8 the compensation for the services of the pilots as may, from
9 time to time, be deemed just and reasonable. A person li-
10 censed as a pilot shall not charge more than the maximum fee
11 established by the commission. Any branch issued to a pilot
12 may be revoked at any time by the commission for negligence,
13 incapacity or other sufficient cause. A branch may not be
14 transferred or assigned.

15 **3. Special permits.** The commission shall grant spe-
16 cial permits to dredges, floating plants and for other ac-
17 tivities requiring the temporary use of any part of the
18 channels where the commission is satisfied that the work is
19 necessary, and may impose reasonable conditions upon the ac-
20 tivities. The commission upon complaint of any person may
21 fix and determine the time when, and the circumstances under
22 which, vessels may lie at the ends of and alongside the
23 wharves in order to maintain open channels; in the interest
24 of navigational safety; and to protect the rights of ripar-
25 ian owners and the persons using the harbor. The commission
26 may provide upon what notice vessels may be removed from the
27 channels where such removal is necessary.

28 **Sec. 6. Rulemaking.** The commission shall from time to
29 time adopt such rules as it deems necessary and proper, not
30 inconsistent with law, for keeping open convenient channels
31 for the passage of vessels, promoting navigational safety in
32 the waters under its control and protecting persons having
33 riparian rights, including, without limitation, procedures,
34 standards and fees for the issuance of permits to build or
35 extend wharves and other structures; to fill or excavate so
36 as not to interfere with navigation or injure the rights of
37 riparian owners; to limit the speed of vessels within the
38 harbor; to permit moorings; to cause the removal of derelict
39 and abandoned vessels; to require the use of a pilot or
40 docking master; and to establish the qualifications for a
41 branch or license therefor within the water and territory
42 within its jurisdiction or any portion thereof. The commis-
43 sion may impose reasonable penalties by rule for violation
44 of the rules, which penalties shall not be in excess of
45 \$500 a day for each violation. The commission shall not

1 promulgate any rule other than as an emergency without a
2 public hearing, preceded by publication, as to the subject
3 matter of the rule and the time and place of the public
4 hearing, at least 7 days prior to the hearing. The rules
5 shall be effective 45 days from the date on which notice of
6 such rulemaking is sent to the City Managers of Portland and
7 South Portland, addressed to the City Councils of the cit-
8 ies, unless either City Council takes official action disap-
9 proving the rule or rules, in whole or in part, prior to the
10 expiration of the 45-day period. All rules of the commis-
11 sion shall remain in effect until repealed or amended, as
12 provided in this section, or when limited by the terms
13 thereof. When the commission determines that an emergency
14 involving the public health, safety or welfare requires that
15 a rule take effect immediately, it may promulgate such rule
16 with immediate effect upon notice to the City Councils and
17 such findings shall be conclusive, provided that the reasons
18 constituting the emergency are set forth therein. Such
19 emergency rules shall be effective for not more than 14
20 days, unless extended after a public hearing after 7 days'
21 prior published notice. In no case shall such rule be
22 extended for a period in excess of 60 days from the date
23 originally promulgated and the rule shall expire immediately
24 upon disapproval by either City Council.

25 **Sec. 7. Harbor master and deputy.**

26 **1. Harbor master and deputy; appointment.** The rules
27 of the commission shall be enforced and carried out by a
28 harbor master and one or more deputy harbor masters
29 appointed by the commission. It shall be the duty of the
30 harbor master or his deputies to collect in the name of the
31 commission all penalties incurred for the violation of such
32 rules and the money so received shall be applied by the com-
33 mission to carry out the purpose of this Act. The appoint-
34 ment of the harbor master and of any deputy harbor master
35 shall be by the commission pursuant to rules of the commis-
36 sion adopted pursuant to section 6. The persons so
37 appointed shall receive compensation fixed by rule of the
38 commission as provided in section 6. Each deputy shall have
39 all the powers and authority of the harbor master. The har-
40 bor master and deputies shall hold office for a term of one
41 year from the date of approval of the appointment, but
42 either may be removed by the commission at any time during
43 such term, for cause, after notice and an opportunity to be
44 heard. The commission shall fill any vacancy only for the
45 remainder of the term, provided that such appointment shall
46 be approved by the City Councils.

1 2. **Duties.** The harbor master or his deputies shall
2 cause any vessel or vessels anchoring or mooring within the
3 channel lines established by the commission or anchoring in
4 such a manner that any portion of the hull, spars or booms
5 extend beyond the lines, due to tide or wind, or which the
6 harbor master finds in any way obstructing the free movement
7 or anchorage or mooring of vessels in any part of the har-
8 bor, to move to such anchorage or mooring area as he desig-
9 nates for that purpose, and enjoy all the authority con-
10 ferred upon harbor masters under the provisions of the gen-
11 eral law, except the power to arrest. Any vessel which
12 obstructs commerce or navigation, or which violates the
13 provisions of this Act or any rule made pursuant to this
14 Act, is declared to be a nuisance. If such vessel is with-
15 out a crew on board, or if the master, owner or person in
16 charge neglects or refuses to move that vessel upon the
17 order of the harbor master or his deputies, the harbor
18 master or his deputies may put a crew on board, or may
19 employ a tug or other tow boat, and move, anchor or other-
20 wise secure that vessel at the cost and risk of the owner or
21 owners of the vessel, and the expense occasioned thereby
22 shall constitute a lien on that vessel, which the harbor
23 master or his deputies may enforce in the name of the com-
24 mission in any manner authorized by law. Any person
25 aggrieved by any enforcement action taken pursuant to this
26 Act without prior court approval may appeal to the commis-
27 sion to set aside such order, and the commission shall hear
28 and decide the appeal within 7 days. The claims secured by
29 such liens shall include any costs of collection and enforcing
30 the liens, including reasonable attorneys' fees. Any
31 person aggrieved by such action of the harbor master or his
32 deputies may file a complaint for review of governmental ac-
33 tion, accompanied by a bond for sufficient sureties in an
34 amount equal to the full amount of the lien, whether or not
35 that person has appealed to the commission as provided in
36 this subsection. Upon approval of such bond, such vessel
37 shall be released from the lien, the validity of which and
38 the liability of the surety or sureties shall be determined
39 in such action.

40 **Sec. 8. Judicial review and violations.** Decisions and
41 actions of the commission, the harbor master or any deputy
42 shall be reviewed pursuant to the Maine Rules of Civil
43 Procedure, Rule 80B, and shall not be subject to the Maine
44 Administrative Procedure Act. The Superior Court may award
45 the penalties provided for violations of this Act or rules
46 made hereunder as part of the adjudication of any action

1 before the court to review or enforce decisions or actions
2 of the commission, the harbor master or any deputy and shall
3 restrain and enjoin violations of this Act and rules law-
4 fully made pursuant thereto. If the court determines that
5 any person, firm or corporation has violated any provision
6 of this Act or any rule issued thereunder, the court shall
7 award the commission all of its costs and expenses incurred
8 in such proceeding, including reasonable attorneys' fees.
9 In addition to such jurisdiction, the District Court shall
10 have jurisdiction to award the penalties for violations of
11 this Act and of rules made pursuant thereto as civil viola-
12 tions. All such penalties shall be for the use of the com-
13 mission. It is a violation of this Act for any person to
14 obstruct, hinder or delay the harbor master or the deputy in
15 the discharge of the duties of his office, or to obstruct,
16 hinder or delay any person assisting them under the provi-
17 sions of this Act. Any person so acting is guilty of a
18 Class E crime, unless the Maine Criminal Code provides a
19 greater punishment classification for the same act, in which
20 case the Maine Criminal Code provisions shall apply.

21 **Sec. 9. Annual reports.** The commission shall annually
22 deliver to the City Manager of each city a copy of a report
23 addressed to the City Councils of the cities, which report
24 shall include statements as to its activities hereunder; any
25 recommendations with respect to legislation by the cities,
26 State or Federal Government which may be necessary or
27 expedient to improve the harbor and access thereto or to
28 enable the commission to more efficiently regulate its
29 affairs; a detailed budget for the next fiscal year; and a
30 statement as to any appropriations if any are deemed neces-
31 sary by the commission to finance its activities for the
32 next fiscal year.

33 **Sec. 10. Appropriations by cities.** Each city may
34 appropriate or lend such money or contribute such services
35 for the use of the commission as it deems reasonable and
36 proper to further the purposes of this Act. The commission's
37 fiscal year shall run from July 1st to June 30th.

38 **Sec. 11. Compensation.** Members of the commission
39 shall serve without compensation, except that each commis-
40 sioner shall be entitled to reimbursement for necessary and
41 reasonable expenses incurred in the performance of his
42 duties under this Act.

1 **Sec. 12. Wharves and fish weirs.** The provisions of
2 the Revised Statutes, Title 38, chapter 9, do not apply to
3 any wharf or fish weir built or extended within Portland
4 Harbor under a permit of the commission issued pursuant to
5 section 5.

6 **Sec. 13. Inconsistent acts repealed.** Except as pro-
7 vided in this Act, Private and Special Law 1917, chapter
8 192; Private and Special Law 1927, chapter 24; Private and
9 Special Law 1955, chapter 134; Private and Special Law 1957,
10 chapter 65; and Private and Special Law 1963, chapter 96, as
11 amended, are repealed.

12

STATEMENT OF FACT

13 The purpose of this bill is to revise the Charter of
14 the Board of Harbor Commissioners for the Harbor of Port-
15 land.

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