

MAINE STATE LEGISLATURE

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1 (New Draft of H.P. 2016, L.D. 1987)
2 SECOND REGULAR SESSION
3

4 ONE HUNDRED AND TENTH LEGISLATURE
5

6 **Legislative Document**

No. 2077

8
9 H. P. 2198 House of Representatives, March 19, 1982
Reported by Representative Macomber from the Committee on
Transportation and printed under Joint Rules No. 2.

EDWIN H. PERT, Clerk

10
11 STATE OF MAINE
12

13 IN THE YEAR OF OUR LORD
14 NINETEEN HUNDRED AND EIGHTY-TWO
15

16 AN ACT Relating to the Board of Harbor
17 Commissioners and its Powers for the
18 Harbor of Portland.
19

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

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

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

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

28 3. **Harbor.** "Harbor" means Portland Harbor.

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

4 5. Pilot. "Pilot" means any person taken on board a
5 vessel for the purpose of navigating the vessel through
6 the entrance, approaches or any channel within the har-
7 bor, other than navigation incidental to the activity
8 of directing the mooring, anchoring, docking or
9 undocking of vessels.

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

25 7. Vessel. "Vessel" means any watercraft used or
26 capable of being used for transportation.

27 **Sec. 2. Commission established.** There is established
28 a Board of Harbor Commissioners for Portland Harbor, which
29 shall be public body corporate and politic and is charged
30 with responsibility for the regulation of navigation and
31 commerce within Portland Harbor in accordance with the
32 provisions of this Act. The commission shall consist of 5
33 members and shall have a quorum of 3 members. Two members
34 of the commission shall be appointed by the City of Port-
35 land, and these members shall be and continue to be resi-
36 dents of the City of Portland during tenure. Two members of
37 the commission shall be appointed by the City of South Port-
38 land, and these members shall be and continue to be resi-
39 dents of the City of South Portland. One member of the com-
40 mission, who shall be appointed by the Governor, with the
41 concurrence of both the City Councils of Portland and South
42 Portland. The initial term for the member appointed by the
43 Governor shall be for 1 year. The City Councils of Portland
44 and of South Portland shall, immediately after this Act

1 takes effect, or as soon thereafter as deemed advisable,
2 meet separately and appoint the 2 members from each city who
3 shall constitute the members of the commission. Each coun-
4 cil shall designate one member to serve for a 3-year term
5 and one member to serve a 2-year term. All appointments
6 thereafter shall be for terms of 3 years, except in the case
7 of a vacancy, which shall be for the remainder of the unex-
8 pired term. Each member shall continue to serve after
9 expiration of his term until his successor is appointed and
10 qualified provided such service shall not continue in excess
11 of 60 days after expiration of his term. The 5 members
12 appointed shall annually elect from their own membership a
13 chairman and a clerk, and may from time to time adopt such
14 procedural rules as are necessary for the proper conduct of
15 the business of the commission. A member may be removed for
16 cause, or upon a determination that such member is not a
17 resident of that city, in the case of those members
18 appointed by the city councils. Removal shall be by the
19 appointing council or, in the case of the 5th member, by the
20 Governor with concurrence of both of the 2 councils.

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

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

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

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

20 **Sec. 5. Permits required.**

21 **1. Creation or maintenance of any obstruction.** The
22 creation and maintenance of any obstruction in any of the
23 navigable waters of the harbor, or in any part of the harbor
24 under the jurisdiction of the commission, except by the
25 United States, without first obtaining a written permit from
26 the commission, is prohibited. It is unlawful to enlarge or
27 extend any wharf heretofore built, build any wharf, pier,
28 dolphin, bulkhead or other structure, dump any stones or any
29 other material into any of the waters, or upon any part of
30 the flats, excavate any part of the harbor, fill in any part
31 of the harbor or modify the course, location or condition of
32 the water of the harbor without a permit from the commission
33 for such purpose. The commission shall not issue any such
34 permit when it determines that the activity will substan-
35 tially or unreasonably interfere with navigation or injure
36 the rights of others.

37 **2. Operation as pilot.** The commission shall appoint
38 such number of pilots for the harbor of Portland as it deems
39 necessary for the safety and convenience of commerce, fix
40 and establish such compensation for the services of the
41 pilots as may, from time to time, be deemed just and reason-
42 able. Every foreign vessel and every American vessel under
43 registry with a draft of 9 feet or more shall take a pilot
44 licensed under this chapter upon entering, departing or

1 navigating upon the waters of Casco Bay and the approaches
2 thereto. In case of refusal to take such a pilot, any such
3 vessel shall pay the established pilot fee as if a pilot has
4 been employed. A pilot boat shall not be obliged to remain
5 on her station at all times. A pilot shall have a lien for
6 his pilotage fees on all vessels liable therefor.

7 This section shall not apply to vessels under enroll-
8 ment, fishing vessels or vessels powered by sail. This
9 section shall not apply to vessels primarily engaged in the
10 carriage of passengers for hire which operate on a published
11 annual schedule and which are not in excess of 500 feet
12 overall length and have a draft not in excess of 20 feet, so
13 long as the master of any such vessel has navigated that
14 specific vessel on the above described waters with the
15 assistance of a pilot for a minimum of 15 round trips of
16 ingress and egress to the above described waters. Provided,
17 that a pilot shall pilot such vessel as described in this
18 paragraph upon the above described waters at least one round
19 trip during each calendar month that the vessel operates
20 upon the above described waters and at such other times as
21 may be required by the Department of Transportation to
22 ensure port safety after hearing and notice.

23 It shall be unlawful for any person not licensed as a
24 pilot under this section to pilot, or offer to pilot, a
25 vessel not exempt under the preceding paragraph. Violations
26 of this provision shall be a misdemeanor punishable by a
27 fine of \$500, or by imprisonment not to exceed 12 months, or
28 by both, for each violation.

29 Persons desiring a branch shall make written applica-
30 tion to the commission stating their qualifications there-
31 for. The applicant shall be a citizen of the United States
32 of America and a resident and citizen of the State. The
33 commission shall make careful examination and investigation
34 of the qualifications of the applicant and if satisfied that
35 he has the requisite qualifications, may give the applicant
36 a branch under the hands of its members and the seal of the
37 commission, authorizing such person to act as pilot. The
38 commission shall prescribe the form of a written applica-
39 tion, the method of investigation or examination, or both,
40 of the qualifications of each applicant and the standards
41 for the branch. Branches shall be granted initially and
42 renewed for terms of 5 years from the date of issuance or
43 renewal unless sooner terminated. Such branches may be
44 granted subject to such reasonable conditions as the commis-
45 sion deems necessary for navigational safety and for the

1 convenience of the public and commerce. The commission may
2 fix and establish by rule the compensation for the services
3 of the pilots as may, from time to time, be deemed just and
4 reasonable. A person licensed as a pilot shall not charge
5 more than the maximum fee established by the commission
6 where use of a pilot is required by this Act. Any branch
7 issued to a pilot may be revoked at any time by the commis-
8 sion for negligence, incapacity or other sufficient cause.
9 A branch may not be transferred or assigned. The branch, so
10 granted, shall be recorded by the clerk of the commission in
11 a book kept for that purpose, entitled "Pilots for Port of
12 Portland;" and the clerk shall receive from the applicant, a
13 reasonable fee for the branch to be established by the com-
14 mission.

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, and subject to the provisions of section
35 5, subsection 1 of this Act for the issuance of permits to
36 build or extend wharves and other structures or to fill or
37 excavate; to limit the speed of vessels within the harbor;
38 to permit moorings; and to cause the removal of derelict and
39 abandoned vessels. The commission may impose reasonable
40 penalties by rule for violation of the rules, which
41 penalties shall not be in excess of \$500 a day for each
42 violation. The commission shall not promulgate any rule
43 other than as an emergency without first presenting such
44 rule to the Department of Transportation, Bureau of Trans-
45 portation Planning and Services for review and comment.
46 Thereafter the commission shall hold a public hearing, pre-

1 ceded by publication, as to the subject matter of the rule
2 and the time and place of the public hearing, at least 7
3 days prior to the hearing. The rules shall be effective 45
4 days from the date on which notice of such rulemaking is
5 sent to the City Managers of Portland and South Portland,
6 addressed to the City Councils of the cities, unless either
7 City Council takes official action disapproving the rule or
8 rules, in whole or in part, prior to the expiration of the
9 45-day period. All rules of the commission shall remain in
10 effect until repealed or amended, as provided in this
11 section, or when limited by the terms thereof. When the
12 commission determines that an emergency involving the public
13 health, safety or welfare requires that a rule take effect
14 immediately, it may promulgate such rule with immediate
15 effect upon notice to the City Councils and such findings
16 shall be conclusive, provided that the reasons constituting
17 the emergency are set forth therein. Such emergency rules
18 shall be effective for not more than 14 days, unless
19 extended after a public hearing after 7 days' prior pub-
20 lished notice. In no case shall such rule be extended for a
21 period in excess of 60 days from the date originally promul-
22 gated and the rule shall expire immediately upon disapproval
23 by either City Council.

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

25 **1. Harbor master and deputy; appointment.** The rules
26 of the commission shall be enforced and carried out by a
27 harbor master and one or more deputy harbor masters
28 appointed by the commission. It shall be the duty of the
29 harbor master or his deputies to collect in the name of the
30 commission all penalties incurred for the violation of such
31 rules and the money so received shall be applied by the com-
32 mission to carry out the purpose of this Act. The appoint-
33 ment of the harbor master and of any deputy harbor master
34 shall be by the commission pursuant to rules of the commis-
35 sion adopted pursuant to section 6. The persons so
36 appointed shall receive compensation fixed by rules of the
37 commission as provided in section 6. Each deputy shall have
38 all the powers and authority of the harbor master. The har-
39 bor master and deputies shall hold office for a term of one
40 year from the date of approval of the appointment, but
41 either may be removed by the commission at any time during
42 such term, for cause, after notice and an opportunity to be
43 heard. The commission shall fill any vacancy only for the
44 remainder of the term, provided that such appointment shall
45 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 enforc-
30 ing 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, Title 5, chapter 375. The
45 Superior Court may award the penalties provided for viola-
46 tions of this Act or rules made hereunder as part of the ad-
47 judication of any action before the court to review or

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

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

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

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

