

MAINE STATE LEGISLATURE

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(EMERGENCY)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 327

H.P. 254 House of Representatives, February 10, 1987
Reported by Representative CARROLL for the Department of
Conservation pursuant to Public Law 1985, Chapter 692, section
3.

Reference to the Joint Standing Committee on State and
Local Government suggested and 1,700 ordered printed under
Joint Rule 18.

EDWIN H. PERT, Clerk

STATE OF MAINE

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

1 AN ACT Dealing with the Authority of Harbor
2 Masters.
3

4 Emergency preamble. Whereas, Acts of the Legis-
5 lature do not become effective until 90 days after
6 adjournment unless enacted as emergencies; and

7 Whereas, it is desirable that coastal municipali-
8 ties regulate activity in their harbors and provide
9 an orderly means by which moorings are assigned and
10 located; and

11 Whereas, many coastal municipalities have enacted
12 ordinances regulating activity in their harbors and
13 providing for an orderly means by which moorings are
14 assigned and located; and

1 Whereas, Public Law 1985, chapter 692 "AN ACT to
2 Clarify the Authority of Harbor Masters" will be re-
3 pealed on April 1, 1987; and

4 Whereas, an immediate clarification of the au-
5 thority of municipalities to enact these ordinances
6 is necessary prior to the approaching boating season;
7 and

8 Whereas, in the judgment of the Legislature,
9 these facts create an emergency within the meaning of
10 the Constitution of Maine and require the following
11 legislation as immediately necessary for the preser-
12 vation of the public peace, health and safety; now,
13 therefore,

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

16 Sec. 1. 38 MRSA §1, as amended by PL 1985, c.
17 531, §2 and as repealed and replaced by PL 1985, c.
18 692, §§1, 4, is repealed and the following enacted in
19 its place:

20 §1. Appointment; compensation

21 The municipal officers of a town, on request by
22 any person desiring mooring privileges or regulation
23 of mooring privileges for boats or vessels, shall ap-
24 point a harbor master for a term of 2 years, who
25 shall be subject to all the duties and liabilities of
26 that office as prescribed by state law, regulations
27 adopted by the municipal officers and municipal ordi-
28 nances. In case of the failure or refusal of the
29 harbor master to perform these duties, he commits a
30 civil violation for which a forfeiture of \$25 shall
31 be adjudged, for the benefit of the town, for each
32 intentional neglect or refusal to attend the duties.
33 The municipal officers may establish his compensation
34 and may, for cause by them declared in writing, after
35 due notice to the officer and hearing, if requested,
36 remove him and appoint another in his stead.

37 The municipal officers may prohibit a harbor
38 master from making arrest or carrying a weapon. Any
39 law enforcement officer vested with the authority to

1 carry a weapon and make arrests has the authority to
2 enforce this subchapter.

3 Sec. 2. 38 MRSA §2, as amended by PL 1965, c.
4 242, is further amended to read:

5 §2. Rules for channel lines; enforcement

6 The municipal officers of all maritime towns and
7 plantations shall make rules and regulations, with
8 suitable provision for enforcement, for the keeping
9 open of convenient channels for the passage of ves-
10 sels in the harbors and waterways of the towns for
11 which they act, and shall establish the boundary
12 lines of ~~sueh~~ those channels and assign suitable por-
13 tions of their harbors for anchorages.

14 Such rules and regulations as may be made by ~~sueh~~
15 those municipal officers shall be enforced and car-
16 ried out by the harbor master of ~~said~~ that town, who
17 may appoint a ~~deputy~~ deputies, to act in case of his
18 absence or disability, his ~~deputy~~ deputies, if any,
19 or any other law enforcement officer of the State or
20 any political subdivision ~~thereof~~ of the State.

21 Sec. 3. 38 MRSA §§3 and 4 are amended to read:

22 §3. Mooring sites

23 In all harbors wherein channel lines have been
24 established by the municipal officers, as provided in
25 section 2, and in all other harbors where mooring
26 rights of individuals are claimed to be invaded and
27 protection is sought of the harbor master, he shall
28 assign and indicate to the master or owner of boats
29 and vessels the location which they may occupy with
30 or for mooring purposes, the kind of mooring to be
31 used and shall change the location of ~~said~~ those
32 moorings from time to time when the crowded condition
33 of ~~sueh~~ that harbor or other conditions render ~~sueh~~
34 the change desirable. He Wherever practicable, he
35 shall assign mooring privileges in ~~sueh~~ those waters
36 in all cases where individuals who own the shore
37 rights or have an interest in the ~~same~~ shore rights
38 are complainants, and shall locate suitable mooring
39 privileges ~~therefor~~ for boats and vessels, temporari-
40 ly or permanently, as the case may be, fronting their

1 land, if so requested, but not thereby to encroach
2 upon the natural channel or channels established by
3 municipal officers; provided that not more than one
4 mooring may be assigned to any shorefront parcel of
5 land under this privilege. The municipal officers
6 shall fix the compensation of the harbor master for
7 such those services rendered.

8 §4. Neglecting to remove or replace moorings

9 In case of the neglect or refusal of the master
10 or owner of any boat or vessel to remove his mooring
11 or to replace it by one of different character, when
12 so directed by the harbor master, said that harbor
13 master shall cause said the mooring to be removed or
14 shall make such change in the character thereof of
15 the mooring as required, and shall collect from the
16 master or owner of such that boat or vessel the sum
17 of \$2 \$10 for either of such those services rendered
18 and the necessary expenses.

19 Sec. 4. 38 MRSA §5, as amended by PL 1977, c.
20 696, §331, is further amended to read:

21 §5. Removal of vessels obstructing anchorage

22 A harbor master shall, upon complaint to him by
23 the master, owner or agent of any vessel, cause any
24 other vessel or vessels obstructing the free movement
25 or safe anchorage of such that vessel to remove to a
26 position to be designated by him, and to cause, with-
27 out any complaint being made to him, any vessels an-
28 choring within the channel lines as established by
29 the municipal authorities as provided in section 2 to
30 remove to such anchorage as he may designate. Whoev-
31 er neglects or refuses to obey the orders of the har-
32 bor master shall be is guilty of a Class E crime.

33 If such that vessel has no crew on board, or if
34 the master or other person in charge neglects or re-
35 fuses to move such vessel as directed by the harbor
36 master, then and in that case such the harbor master
37 may put a suitable crew on board and move such that
38 vessel to a suitable berth at a wharf or anchorage at
39 the cost and risk of the owners thereof of the
40 vessel, and shall charge \$2 \$10, to be paid by the
41 master or owner of such that vessel, which charge,

1 together with the cost of the crew for removing such
2 that vessel the harbor master may collect by civil
3 action.

4 Sec. 5. 38 MRSA §7, 2nd and 3rd ¶¶, as enacted
5 by PL 1985, c. 692, §§2 and 4, are repealed and the
6 following enacted in their place:

7 A municipal ordinance which addresses the assign-
8 ment of mooring privileges must assign those privi-
9 leges regardless of municipal residency giving prior-
10 ity to commercial vessels; except that, shorefront
11 property owners shall be assigned mooring privileges
12 as established in section 3.

13 Notwithstanding the provisions of this section,
14 all existing mooring privileges in effect on the ef-
15 fective date of this section are declared valid and
16 may be continued subject to the rules of the munici-
17 pality. Those privileges are not transferable.

18 Assignment of those mooring privileges does not
19 confer any right, title or interest in submerged or
20 intertidal lands owned by the State. To the extent
21 that there is any inconsistency between this subchap-
22 ter and any law which establishes or otherwise pro-
23 vides for a port authority, board of harbor commis-
24 sioners or similar authority for any coastal waters
25 of the State, that inconsistency shall be resolved in
26 favor of the provisions of this subchapter.

27 Sec. 6. 38 MRSA §8 is enacted to read:

28 §8. Definitions

29 As used in this section, unless the context oth-
30 erwise indicates, the following terms have the fol-
31 lowing meanings.

32 1. Commercial vessels. "Commercial vessels"
33 means a vessel, the primary use of which allows the
34 owner to engage in commerce.

35 2. Municipal resident. "Municipal resident"
36 means an individual who lives in a given municipali-
37 ty, as distinguished from a visitor or transient; or
38 an individual who owns property in and pays property
39 taxes to the municipality.

1 Sec. 7. PL 1985, c. 692, §4 is repealed.

2 **Emergency clause.** In view of the emergency cited
3 in the preamble, this Act shall take effect when ap-
4 proved.

5 STATEMENT OF FACT

6 As a result of Public Law 1985, chapter 692 "AN
7 ACT to Clarify the Authority of Harbor Masters," en-
8 acted by the 112th Legislature, the Department of
9 Conservation was directed to conduct a study of the
10 issues raised by that Public Law. This bill results
11 from the study and addresses the issues raised by
12 members of the advisory board and the Bureau of Pub-
13 lic Lands, the agency with management responsibility
14 for the state-owned submerged lands involved in har-
15 bor management.

16 Emergency legislation is necessary because impor-
17 tant sections of the "Act to Clarify the Authority of
18 Harbor Masters," are automatically repealed April 1,
19 1987.

20 Numerous housekeeping issues are addressed in
21 sections 1 to 4 of this bill. They include an in-
22 crease in the term of harbor masters from 1 to 2
23 years, the option of appointing more than one deputy,
24 a limitation of special mooring privileges to not
25 more than one mooring a shorefront parcel of land and
26 an increase to \$10 in the fee to be charged to boat
27 owners for removal of their vessels from unauthorized
28 locations.

29 Section 5 reestablishes the municipalities' au-
30 thority to enact ordinances to regulate harbor activi-
31 ties which will automatically be repealed on April
32 1, 1987. Of equal importance, it establishes that
33 assignment of mooring privileges will be made regard-
34 less of municipal residency giving priority to com-
35 mercial vessels. Recognizing the long-standing na-
36 ture of existing mooring assignments, the section in-
37 cludes a grandfather provision for those assignments.
38 In addition, this section resolves any inconsisten-
39 cies between this law and the laws which govern port
40 authorities in favor of this law.

1 The enactment of this bill will result in a fair
2 system of assigning mooring privileges to be managed
3 at the municipal level.

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