

# MAINE STATE LEGISLATURE

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(New Draft of H.P. 254, L.D. 327)  
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1794

H.P. 1315 House of Representatives, June 9, 1987  
Reported by Representative CARROLL from the Committee on  
State and Local Government and printed under Joint Rule 2.  
EDWIN H. PERT, Clerk  
Original bill submitted by the Department of Conservation  
pursuant to Public Law 1985, chapter 692, section 3.

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

6 Sec. 1. 38 MRSA §1, as amended by PL 1985, c.  
7 531, §2 and as repealed and replaced by PL 1985, c.  
8 692, §§1 and 4, is repealed and the following enacted  
9 in its place:

10 §1. Appointment; compensation

11 The municipal officers of a town, on request by  
12 any person desiring mooring privileges or regulation  
13 of mooring privileges for boats or vessels, shall ap-  
14 point a harbor master for a term of not less than one

1 year, who shall be subject to all the duties and lia-  
2 bilities of that office as prescribed by state law  
3 and regulations adopted by the municipal officers and  
4 municipal ordinances. If the harbor master refuses to  
5 perform these duties, he commits a civil violation  
6 for which a forfeiture of \$25 shall be adjudged, for  
7 the benefit of the town, for each intentional neglect  
8 or refusal to attend to the duties. The municipal of-  
9 ficers may establish his compensation and, for cause  
10 by them declared in writing, after due notice to the  
11 officer and hearing, if requested, remove him and ap-  
12 point another in his stead.

13 The municipal officers may prohibit a harbor  
14 master from making arrest or carrying a weapon. Any  
15 law enforcement officer vested with the authority to  
16 carry a weapon and make arrests has the authority to  
17 enforce this subchapter.

18 **Sec. 2. 38 MRSA §2, as amended by PL 1965, c.**  
19 **242, is further amended to read:**

20 §2. Rules for channel lines; enforcement

21 The municipal officers of all maritime towns and  
22 plantations shall and the county commissioners in the  
23 case of maritime unorganized townships may make rules  
24 and regulations, with suitable provision for enforce-  
25 ment, for the keeping open of convenient channels for  
26 the passage of vessels in the harbors and waterways  
27 of the towns or townships for which they act, and  
28 shall may establish the boundary lines of such those  
29 channels and assign suitable portions of their har-  
30 bors and other coastal and tidal waters within their  
31 jurisdiction for anchorages.

32 Such rules and regulations as may be made by such  
33 those municipal officers or county commissioners  
34 shall be enforced and carried out by the harbor  
35 master of said that town or unorganized township, who  
36 may--appoint--a-deputy--to-act-in-case-of-his-absence  
37 or-disability--his-deputy--if-any, or any other law  
38 enforcement officer of the State or any political  
39 subdivision thereof of the State.

40 The harbor master may appoint deputies who, under  
41 his direction, shall enforce and carry out the rules  
42 and regulations of this section.

1           **Sec. 3. 38 MRSA §3** is repealed and the following  
2 enacted in its place:

3           §3. Mooring sites; harbor master compensation

4           In all harbors wherein channel lines have been  
5 established by the municipal officers, as provided in  
6 section 2, and in all other coastal and tidal waters  
7 and harbors where mooring rights of individuals are  
8 claimed to be invaded and protection is sought of the  
9 harbor master, he shall assign and indicate only to  
10 the master or owner of boats and vessels the location  
11 which they may occupy for mooring purposes and shall  
12 change the location of those moorings from time to  
13 time when the crowded condition of that harbor, the  
14 need to conform to section 6 or other conditions  
15 render the change desirable.

16           Whenever practicable, the harbor master shall as-  
17 sign mooring privileges in those waters where indi-  
18 viduals own the shore rights to a parcel of land, are  
19 masters or owners of a boat or vessel and are com-  
20 plainants, and shall locate suitable mooring privi-  
21 leges therefor for boats and vessels, temporarily or  
22 permanently, as the case may be, fronting their land,  
23 if so requested, but not to encroach upon the natural  
24 channel or channels established by municipal offi-  
25 cers; provided that not more than one mooring may be  
26 assigned to any shorefront parcel of land under this  
27 privilege. Notwithstanding section 11, persons who,  
28 prior to January 1, 1987, owned shore rights of at  
29 least 100 feet of frontage regardless of the size of  
30 the lot shall have mooring privileges assigned ac-  
31 cording to this section. The limitation of one moor-  
32 ing assigned under this privilege shall not prevent  
33 the owner of a shore front parcel from receiving ad-  
34 ditional mooring assignments under the allocation  
35 system for all other residents.

36           The municipal officers shall fix the compensation  
37 of the harbor master for those services rendered.

38           **Sec. 4. 38 MRSA §4** is repealed and the following  
39 enacted in its place:

40           §4. Neglecting to remove or replace moorings

1           In case of the neglect or refusal of the master  
2 or owner of any boat or vessel to remove his mooring  
3 or to replace it by one of different character, when  
4 so directed by the harbor master, that harbor master  
5 shall cause the entire mooring to be removed or the  
6 buoy removed and the chain dropped to the bottom or  
7 shall make such change in the character of the moor-  
8 ing as required, and collect from the master or owner  
9 of that boat or vessel the sum of \$100 for either of  
10 those services rendered and the necessary expenses.  
11 The harbor master may immediately dispose of such  
12 mooring or buoy. If possible, this shall be done by  
13 sale and the proceeds shall be applied to harbor man-  
14 agement.

15           Before removing a mooring or a buoy, a harbor  
16 master shall notify the master or owner by mail at  
17 his last known address of the action desired of him,  
18 the fact that the mooring will be removed and dis-  
19 posed of and the fine. If the matter is not settled  
20 to his satisfaction within 2 weeks, the harbor master  
21 may take the action provided for in this section.

22           Sec. 5. 38 MRSA §5, as amended by PL 1977, c.  
23 696, §331, is repealed and the following enacted in  
24 its place:

25           §5. Removal of vessels obstructing anchorage

26           A harbor master, upon complaint to him by the  
27 master, owner or agent of any vessel, shall cause any  
28 other vessel or vessels obstructing the free movement  
29 or safe anchorage of that vessel to remove to a posi-  
30 tion to be designated by him and to cause, without  
31 any complaint being made to him, any vessels anchor-  
32 ing within the channel lines as established by the  
33 municipal authorities, as provided in section 2, to  
34 remove to such anchorage as he may designate. Whoev-  
35 er neglects or refuses to obey the orders of the har-  
36 bor master is guilty of a Class E crime.

37           If that vessel has no crew on board or if the  
38 master or other person in charge neglects or refuses  
39 to move such vessel as directed by the harbor master,  
40 the harbor master may put a suitable crew on board  
41 and move that vessel to a suitable berth at a wharf  
42 or anchorage at the cost and risk of the owners of

1 the vessel and shall charge \$100, to be paid by the  
2 master or owner of that vessel, which charge, togeth-  
3 er with the cost of the crew for removing that vessel  
4 the harbor master may collect by civil action.

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

8 If a municipality receives more applications for  
9 mooring privileges on state-owned lands that are con-  
10 trolled by its rules or ordinances than there are  
11 mooring spaces, the municipality shall assign spaces  
12 as they become available from a waiting list in the  
13 order in which names were placed on the list, except  
14 as provided in this paragraph. If there are appli-  
15 cants who are nonresidents who wish to moor a vessel  
16 whose principal use is noncommercial and less than  
17 10% of the moorings are currently assigned to persons  
18 fitting this description, then the mooring shall be  
19 assigned to the first such person on the list. If  
20 there are applicants who are nonresidents who wish to  
21 moor a vessel whose principal use is commercial and  
22 less than 10% of the assigned moorings are currently  
23 assigned to persons fitting this description, then  
24 the mooring shall be assigned to the first such per-  
25 son on the list. If both nonresident noncommercial  
26 and nonresident commercial assignments are below 10%  
27 and there are both types of applicants on the waiting  
28 list, the available space shall be assigned to an ap-  
29 plicant in the category that is the farthest below  
30 10%.

31 The burden of proof in determining residence and  
32 the principal use of a vessel shall be upon the ap-  
33 plicant.

34 It is not a requirement of this section that a  
35 person lose a current mooring assignment to meet the  
36 objectives of this section. Each year, persons with  
37 mooring assignments shall report to the harbor master  
38 their anticipated residency status for the next year  
39 and whether they anticipate the principal use of  
40 their boat to be commercial or noncommercial. The  
41 harbor master shall update the percentage of mooring  
42 holders in each category from this data.

1 Waiting lists in effect at the time that this  
2 section becomes law may continue in effect, but persons  
3 shall be selected from these lists in accordance  
4 with the allocation provisions of this section. If,  
5 at the time a person applies for a mooring there is  
6 no waiting list, this person may be assigned a moor-  
7 ing without regard to the allocation provision of  
8 this section.

9 Mooring assignments shall not be transferred. As-  
10 signments shall not be rented unless the provision  
11 for rental was part of the agreement when the mooring  
12 was assigned.

13 Shore front property owners shall be assigned  
14 mooring privileges as established in section 3.

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

24 If the mooring fee charged to nonresidents ex-  
25 ceeds \$20 a year, the fee charged shall be reasonable  
26 in relation to the costs involved in providing that  
27 mooring and shall not exceed 5 times the amount  
28 charged to residents.

29 This section shall be construed broadly in order  
30 to accomplish the distribution of moorings to nonres-  
31 idents as specified in this section.

32 Sec. 7. 38 MRSa §§8, 9, 10 and 11 are enacted to  
33 read:

34 §8. Waiting list

35 Whenever there are more applicants for a mooring  
36 assignment than there are mooring spaces available,  
37 the harbor master or other town official shall create  
38 a waiting list. The town officials shall work out a  
39 reasonable procedure for persons to add their names

1 to this list. The procedure shall be posted in a pub-  
2 lic place. The list shall be considered a public doc-  
3 ument under the freedom of access law.

4 §9. Abandonment of watercraft

5 No person may bring into or maintain in the har-  
6 bor any derelict watercraft, watercraft for salvage,  
7 or abandon any watercraft in the harbor without a  
8 permit from the harbor master or, if there is no har-  
9 bor master, the appropriate municipal official. Who-  
10 ever does so without permit is guilty of a Class E  
11 crime. Watercraft which are to be salvaged by firms  
12 licensed by the State to do salvage work shall be ex-  
13 cluded from this section. The municipal board or com-  
14 mission entrusted with harbor management shall be the  
15 sole determiner as to what constitutes a watercraft  
16 that is derelict and what constitutes a watercraft  
17 that is abandoned.

18 §10. Harbor master liability

19 Notwithstanding any other provision of law, a  
20 harbor master who, in the performance of his statuto-  
21 ry duties as set forth in sections 4 and 5, causes  
22 any damage to property or any injury to a person  
23 shall not be liable for that damage or injury, unless  
24 the damage or injury is a direct result of the gross  
25 negligence, recklessness or intentional misconduct of  
26 the harbor master.

27 §11. Definitions

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

31 1. Municipal resident. "Municipal resident"  
32 means any person who occupies a dwelling within the  
33 municipality for more than 180 days in a calendar  
34 year. A municipality may by ordinance include other  
35 persons in the definition of resident.

36 2. Parcel of land. "Parcel of land" means the  
37 larger of the minimal buildable lot size in the mu-  
38 nicipality or 20,000 square feet and, in either case,  
39 including 100 feet of shoreline frontage.





1           Section 6 is the most important provision of the  
2 new draft. It requires that, if there is demand from  
3 such groups, a municipality must assign 10% of its  
4 mooring spaces to nonresidents who own boats which  
5 are used for noncommercial purposes and 10% to non-  
6 residents who own boats which are used for commercial  
7 purposes. Current law which was enacted last year re-  
8 quired that nonresidents receive at least 10% of the  
9 number of moorings assigned to residents. Prior to  
10 last year there was no requirement for nonresident  
11 moorings. The new draft does not require the  
12 reassigning of an existing mooring assignment in or-  
13 der to meet the nonresident allocation requirement.  
14 Also, if there is no waiting list for mooring assign-  
15 ments, moorings may be assigned on a first-come,  
16 first-serve basis. Mooring assignments may not be  
17 transferred and may only be rented if this provision  
18 was included in the mooring assignment agreement. If  
19 the fee charged nonresidents exceeds \$20, the fee is  
20 not to be excessive relative to the costs incurred  
21 and may not exceed 5 times the amount charged to res-  
22 idents.

23           It is the intent of this new draft to prohibit  
24 any activity by a private person or a municipal offi-  
25 cial whose intent or principal result is to circum-  
26 vent the mooring allotment objectives of this new  
27 draft.

28           This new draft prohibits the abandonment of wa-  
29 tercraft in a harbor without permission of the munic-  
30 ipality.

31           The new draft restricts the liability of a harbor  
32 master in moving offending moorings or vessels to  
33 those instances when damage is due to his negligence.

1           Legislation which was enacted last year on this  
2 subject was interim legislation to essentially reaffirm  
3 the existing harbor master practices until final  
4 legislation could be developed. It was to sunset  
5 April 1, 1987. Public Law 1987, chapter 24, extended  
6 this sunset until April 1, 1988. This new draft is to  
7 take effect on April 1, 1988. It is being delayed until  
8 that time to give municipalities the opportunity  
9 to prepare for the changes which it makes.

10

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