

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 558

H.P. 415

House of Representatives, March 6, 1989

Reference to the Committee on Energy and Natural Resources suggested and ordered printed.

Ed Pert

EDWIN H. PERT, Clerk

Presented by Representative HOGLUND of Portland.

Cosponsored by Senator LUDWIG of Aroostook, Representative MICHAUD of East Millinocket and Representative JACQUES of Waterville.

STATE OF MAINE

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

An Act to Ensure Public Access to the Shoreland Zone.



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

3 **Sec. 1. 12 MRSA §558-A, sub-§2, ¶A, as amended by PL 1987, c.**
5 **765, §1, is further amended to read:**

7 **A. For fill, permanent causeways, bridges, marinas,**
9 **wharves, docks, pilings, moorings or other permanent**
11 **structures:**

13 (1) The director shall charge the lessee a base rent
15 that practically approximates the fair market rental
17 value of the land;

19 (2) The director may adjust the base rent, decreasing
21 it for desirable uses or increasing it for undesirable
23 ones. In determining the desirability of uses, the
25 director shall consider the extent to which the use
27 does not impair the future use of the submerged or
29 intertidal land for fishing, fowling or navigation,
31 needs to be located on the submerged land, and exploits
33 natural renewable resources of the water;

35 (3) The director may revalue rents every 5 years. For
37 leases entered into before and after July 1, 1984,
39 rents shall not exceed 4¢ per square foot increased by
41 10% cumulatively for each year that has elapsed since
43 July 1, 1984, further adjusted by the cumulative
45 increase in the United States Consumer Price Index.
47 Notwithstanding this limit, if an appraisal of the
49 value of the land under a new or existing lease is
51 performed, the director may charge a rent based on
 subparagraphs (1) and (2);

 (4) The director may also lease, for a period of not
 more than 5 years, a buffer zone of not more than 30
 feet in width around a permanent structure located on
 submerged or intertidal land, provided the lease is
 necessary to preserve the integrity and safety of the
 structure and the Commissioner of Marine Resources
 consents to that lease;

(4-A) The director may grant the proposed lease upon
 reasonable terms and conditions only if the director
 finds, in addition to any other findings required by
 this section, that the proposed lease will not
 unreasonably interfere with legally or customarily
 established public access ways to, or public rights in,
 on or over, the intertidal or submerged lands and the
 waters above those lands;

 (5) No portion of any existing or proposed lease may
 be subleased after August 1, 1988, for a period of time

1 of more than 5 years for the purpose of providing
3 berthing space for any boat or vessel. This
5 subparagraph shall not apply to any existing sublease
7 or assignments thereof or to any subleasing plan or
9 arrangement approved by the director prior to April 15,
11 1988. This subparagraph is repealed 91 days after the
13 adjournment of the First Regular Session of the 114th
15 Legislature; and

(6) The director may grant the proposed lease if the
director finds that, in addition to any other findings
that the director may require, the proposed lease:

(a) Will not unreasonably interfere with
navigation;

(b) Will not unreasonably interfere with fishing
or other existing marine uses of the area; and

(c) Will not unreasonably diminish the
availability of services and facilities necessary
for commercial marine activities.

This subparagraph is repealed 91 days after the
adjournment of the First Regular Session of the 114th
Legislature.

Sec. 2. 38 MRSA §484, sub-§9 is enacted to read:

9. Public access. When the development is located on a
parcel of land wholly or partly within the shoreland zone, the
development will not unreasonably affect legally or customarily
established public access ways to navigable waters for commercial
or recreational uses exercisable as a matter of right in, on or
over navigable waters. For the purpose of this subsection,
navigable waters are limited to great ponds, as defined in
section 480-B, fresh water wetlands and coastal wetlands, as
defined in section 482, navigable rivers and marine waters from
the mean low tide line to the limits of State jurisdiction.

STATEMENT OF FACT

The purpose of this bill is to protect existing public
access rights to and public rights to use navigable waters and
the lands beneath them. The bill changes the site location of
development laws and the law governing leasing of state-owned
submerged and intertidal lands.

Section 1 of the bill changes the submerged and intertidal
lands leasing law, Maine Revised Statutes, Title 12, section

1 558-A. The bill requires the Director of the Bureau of Public
2 Lands, prior to entering into a submerged lands lease, to find
3 that leasing the lands in question will not unreasonably
4 interfere with public access rights to the leased area and public
5 rights to use the leased lands and the waters above them.

7 Section 2 of the bill, changing the site location of
8 development law, is intended to ensure that shoreside
9 developments subject to site review do not unreasonably restrict
10 public access. In the bill, the Board of Environmental
11 Protection may issue a site permit only if it determines that the
12 proposed development will not unreasonably interfere with public
13 access to navigable waters for commercial or recreational
14 purposes. The term "navigable waters" is defined in this section
15 of the bill.

17 The bill does not create any additional access opportunities
18 for the public. The Board of Environmental Protection and the
19 Bureau of Public Lands must consider the impact of the proposed
20 development or lease on existing public access rights. The bill
21 protects public access opportunities only insofar as they relate
22 to legally exercisable rights in, on or over the navigable waters
23 of this State. The bill does not add to the number of public
rights associated with navigable waters.