

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 668, L.D. 910, Bill, "An Act to Amend the Law Relating to Submerged Land"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

Sec. 1. 12 MRSA §558-A, sub-§1, ¶¶C and D are enacted to read:

C. "Commercial fishing activity" means any activity involving the landing or processing of shellfish, finfish or other natural products of the sea or other activities directly related to landing or processing shellfish, finfish or natural sea products, including fueling, loading or selling these products.

D. "Submerged land" means:

(1) All land from the mean low-water mark or a maximum of 1,650 feet seaward of the mean high-water mark, whichever is closer to the mean high-water mark, out to the seaward boundary of coastal waters as defined in section 6001;

(2) All land below the mean low-water mark of tidal rivers upstream to the farthest natural reaches of the tides;

(3) All land below the natural mean low-water mark of ponds which in their natural state are 10 or more acres in size; and

(4) The river bed of international boundary rivers, defined as all land lying between defined banks, created by the action of surface water and characterized by a lack of terrestrial vegetation and devoid of topsoil, and the international boundary line.

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

5 2. **Leases.** The director may lease, for a term of years not
6 exceeding 30 and with conditions ~~he~~ the director deems
7 reasonable, the right to dredge, fill or erect permanent
8 causeways, bridges, marinas, wharves, docks, pilings, moorings or
9 other permanent structures on submerged and intertidal land owned
10 by the State.

11 A. For fill, permanent causeways, bridges, marinas,
12 wharves, docks, pilings, moorings or other permanent
13 structures and for nonpermanent structures that occupy a
14 total of 500 square feet or more of submerged land or occupy
15 a total of 2,000 square feet or more of submerged land if
16 used exclusively for commercial fishing activities:

17
18 (1) The director shall charge the lessee a base rent
19 that practically approximates the fair market rental
20 value of the land; Fair market rental value shall be
21 the municipally assessed value per square foot for the
22 adjacent upland multiplied by a reduction factor based
23 on the use of the leased submerged land. The reduction
24 factors for use categories shall be as follows:

25
26 (a) A reduction factor of 0%, or no rental fee,
27 for nonprofit organizations or publicly owned
28 facilities that offer free public use or public
29 use with nominal user fees. Public uses include,
30 but are not limited to, municipal utilities and
31 facilities that provide public access to the
32 water, town wharves, walkways, fishing piers, boat
33 launches, parks, nature reserves, swimming or
34 skating areas and other projects designed to allow
35 or enhance public recreation, fishing, fowling and
36 navigation and for which user fees are used
37 exclusively for the maintenance of the facility;

38 (b) A reduction factor of 1% for commercial
39 fishing uses of renewable aquatic resources.
40 Commercial uses of renewable aquatic resources
41 include, but are not limited to, facilities which
42 are directly involved in commercial fishing
43 activities. Such facilities shall include, but
44 not be limited to, fish piers, lobster
45 impoundments, fish processing facilities, berthing
46 for fishing boats and floats or piers for the
47 storage of gear. To qualify as a commercial use
48 of renewable aquatic resources, a marina must have
49

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1 at least 50% of its slips in use by commercial
2 fishing boats year round;

3
4 (c) A reduction factor of 2% for water dependent
5 commerce, industry and private uses. Water
6 dependent commerce, industry and private uses
7 other than commercial uses of renewable aquatic
8 resources include, but are not limited to, all
9 facilities that are functionally dependent upon a
10 waterfront location, cannot reasonably be located
11 or operated on an upland site or are essential to
12 the operation of the marine industry. Such
13 facilities shall include, but not be limited to,
14 privately owned piers and docks, cargo ports,
15 private boat ramps, shipping and ferry terminals,
16 tug and barge facilities, businesses that are
17 engaged in watercraft construction, maintenance or
18 repair, aquariums and marinas that have less than
19 50% of their slips in use by commercial fishing
20 boats year round; and

21
22 (d) A reduction factor of 10% for upland uses and
23 fill. Upland uses include, but are not limited
24 to, all uses that can operate in a location other
25 than on the waterfront or which are not essential
26 to the operation of the marine industry. Such
27 facilities shall include, but not be limited to,
28 residences, offices, restaurants and parking
29 lots. Fill shall include the placement of solid
30 material other than pilings or other open support
31 structures upon submerged lands.

32
33 When the director determines that the municipally
34 assessed value of the adjacent upland is not an
35 accurate indicator of the value of submerged land, the
36 director may require the applicant to provide an
37 appraisal of the submerged land. The appraisal must be
38 approved by the director;

39
40 ~~(2) -- The director may adjust the base rent, decreasing~~
41 ~~it for desirable uses or increasing it for undesirable~~
42 ~~ones. -- In determining the desirability of uses, the~~
43 ~~director shall consider the extent to which the use~~
44 ~~does not impair the future use of the submerged or~~
45 ~~intertidal land for fishing, fowling or navigation,~~
46 ~~needs to be located on the submerged land, and exploits~~
47 ~~natural renewable resources of the water;~~

48
49 ~~(3) The director may revalue rents every 5 years. For~~
50 ~~leases entered into before and after July 1, 1984,~~
51 ~~rents shall not exceed 4¢ per square foot increased by~~
~~10% cumulatively for each year that has elapsed since~~

1 July--1,--1984,--further--adjusted--by--the--cumulative
increase--in--the--United--States--Consumer--Price--Index,
3 Notwithstanding--this--limit,--if--an--appraisal--of--the
value--of--the--land--under--a--new--or--existing--lease--is
5 performed,--the--director--may--charge--a--rent--based--on
subparagraphs--(1)--and--(2) After October 1, 1990, the
7 director may revalue all existing rents to full fair
market rental value. Rents may be adjusted annually
9 until the full fair market rental value is reached.
11 Thereafter, the director may revalue rents every 5
years;

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

21 (5) ~~No portion of any Any existing or proposed lease~~
may be subleased after August 1, 1988, for a the period
23 of ~~time of more than 5 years~~ the original lease for the
purpose of providing berthing space for any boat or
25 vessel,---This---subparagraph---shall---not---apply---to---any
existing---sublease---or---assignments---thereof---or---to---any
27 subleasing plan or arrangement approved by the director
prior to April 15, 1988.---This---subparagraph---is---repealed
29 91 days after the adjournment of the First Regular
Session of the 114th Legislature; and

31 (5-A) No portion of an existing or proposed lease may
33 be transferred from a person subleasing that portion to
35 provide berthing space for any boat or vessel except
37 for a transfer to heirs upon death of the sublessee
holder or a transfer to the original leaseholder
subject to terms agreed to by the lessor and sublessee
39 at the time of the sublease. This subparagraph shall
not apply to any subleasing arrangements entered into
prior to June 15, 1989; and

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

45 (a) Will not unreasonably interfere with
47 navigation;

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

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1 (c) Will not unreasonably diminish the
2 availablility of services and facilities necessary
3 for commercial marine activities. ; and

4 (d) Will not unreasonably interfere with ingress
5 and egress of riparian owners.

6
7 ~~This--subparagraph--is--repealed--91--days--after--the~~
8 ~~adjournment--of--the--First--Regular--Session--of--the--114th~~
9 ~~Legislature.~~

10
11 The bureau shall promulgate rules pertaining to this
12 subparagraph by March 15, 1990.

13
14
15 B. For dredging, impounded areas and underwater cables and
16 pipelines, the director shall develop such terms and
17 conditions as he the director deems reasonable.

18
19 C. The director shall charge an administrative fee of \$25
20 \$100 for each lease in addition to any rent.

21
22 D. The director may establish a reasonable minimum rent to
23 which any lease is subject, but it shall not exceed \$75 per
24 year.

25
26 **Sec. 3. 12 MRSA §558-A, sub-§3, as enacted by PL 1983, c. 819,**
27 **Pt. A, §10, is amended to read:**

28
29 **3. Easements.** The director may grant, upon such terms and
30 conditions as he the director deems reasonable, ~~but--without~~
31 ~~valuable--consideration,--except--for--a--one--time--administrative--fee~~
32 ~~of--\$15,~~ assignable easements for a term of years not exceeding 30
33 for the use of submerged and intertidal lands for the purposes
34 permitted in subsection 2, ~~provided--that--that--use.~~ The lessee
35 shall pay an administrative fee of \$50 for each easement at the
36 time of processing and a registration fee of \$25 due every 5
37 years. The director may refuse to grant an easement for the use
38 of submerged lands if the director determines the easement will
39 unreasonably interfere with customary or traditional public
40 access ways to, or public trust rights in, on or over the
41 intertidal or submerged lands and the waters above those lands.
42 The director may grant an easement for submerged lands if a
43 structure:

44
45 A. Is for the exclusive benefit of the abutting upland
46 owner for charitable purposes as defined in the United
47 States Internal Revenue Code, Section 501, (c) (3);

48
49 B. Occupies a total of not more than 500 square feet of
50 state-owned submerged land for any lawful purpose and is
51 permanent; or

1 C. Occupies a total of not more than 2,000 square feet of
2 state-owned submerged land for the exclusive purpose of
3 ~~landing or processing shellfish, finfish or other natural~~
4 ~~products of the sea or for other activities directly related~~
5 ~~to the purpose of landing or processing shellfish, finfish~~
6 ~~or natural sea products, including fueling, loading or~~
7 ~~selling these products, or commercial fishing activities and~~
8 ~~is permanent.~~

9
10 D. ~~Is for harbor improvement by the Federal Government.~~

11 **Sec. 4. 12 MRSA §558-A, sub-§6**, as enacted by PL 1983, c. 819,
12 Pt. A, §10, is repealed and the following enacted in its place:

13
14 **6. Constructive easements.** The owners of all structures
15 actually upon submerged and intertidal lands on October 1, 1975,
16 shall be deemed to have been granted a constructive easement for
17 a term of 30 years on the submerged land directly underlying the
18 structure. Beginning on January 1, 1991, the bureau shall
19 undertake a registration program for all structures granted
20 constructive easements. Constructive easements shall be subject
21 to administrative and registration fees for easements pursuant to
22 subsection 3. The director shall develop procedures, rules and
23 registration forms necessary to accomplish the purposes of this
24 subsection. The bureau shall complete the registration of
25 constructive easements on or before December 31, 1995.

26
27
28 **Sec. 5. 12 MRSA §558-A, sub-§9** is enacted to read:

29
30 **9. Public compensation.** When the director determines that
31 the public should be compensated for the loss or diminution of
32 traditional and customary public uses resulting from the
33 activities proposed by the lessee, the director may negotiate
34 with the lessee to provide, as a condition of the lease,
35 walkways, boat launching ramps, parking space or other
36 facilities. The determination of loss or diminution of
37 traditional and customary public uses and appropriate public
38 compensation shall be made in consultation with local municipal
39 officials.

40
41 **Sec. 6. Report required.** The Director of the Bureau of Public
42 Lands shall study the issue of equitable lease fees for submerged
43 lands for great ponds that cross several municipal boundaries or
44 cross into the jurisdiction of the Maine Land Use Regulation
45 Commission. The director shall report back to the Joint Standing
46 Committee on Energy and Natural Resources by February 10, 1990,
47 with the director's findings and any recommendations for
48 legislative changes.

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50 **Sec. 7. Allocation.** The following funds are allocated from
51 Other Special Revenue to carry out the purposes of this Act.

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	1989-90	1990-91
CONSERVATION, DEPARTMENT OF		
Bureau of Public Lands		
Public Lands Management Fund		
Positions	(1)	(1)
Personal Services	\$26,250	\$36,000
All Other	18,000	21,500
Capital Expenditures	4,000	4,000
Provides funds for a Submerged Lands Coordinator, contractual services and general operating expenses to administer the submerged land program.		
DEPARTMENT OF CONSERVATION		
TOTAL	<u>\$48,250</u>	<u>\$61,500</u>

FISCAL NOTE

Enactment of this bill would:

1. Require an allocation of Other Special Revenue to the Department of Conservation, Public Lands Management Fund, in the amount of \$48,250 for fiscal year 1989-90 and \$61,500 for fiscal year 1990-91; and
2. Result in an increase in Other Special Revenue to the Department of Conservation, Public Lands Management Fund, in the amount of \$17,000 for fiscal year 1989-90 and \$52,000 for fiscal year 1990-91. This additional revenue would be derived from the proposed adjustments to existing leases, new leases at full fair market value and anticipated administrative fees.'

STATEMENT OF FACT

This amendment incorporates recommendations from a working group on submerged land established as part of Public Law 1987, chapter 765. It differs from the original bill in that it clarifies how the director will determine the rental rate for leases and sets forth the classifications in statutory language.

The amendment also prohibits transfers of subleases of submerged lands except to the original holder of the lease or to heirs upon death of the sublease holder. The right of the

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1 director to deny a lease that will interfere with customary or
2 traditional public access to or on the submerged lands is
3 clarified for easements. A companion bill, LD 558, contains
4 similar language for the director to deny leases.

5
6 The director is given the authority to negotiate with an
7 applicant for a submerged lands lease to provide compensation for
8 the loss of public uses if the director determines that the lease
9 will result in a public loss. The amendment also stipulates that
10 municipal officials will have a voice in this determination.

11
12 Finally, the amendment makes several technical changes to
13 the definitions of terms used in this section and requires the
14 bureau to undertake a study of the disparity of lease fees on
15 water bodies that cross into several jurisdictions.

Reported by the Committee on Energy and Natural Resources
Reproduced and distributed under the direction of the Clerk of the
House
6/1/89 (Filing No. H-379)