

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

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Legislative Document

No. 910

H.P. 668

House of Representatives, March 23, 1989

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

*Ed Pert*

EDWIN H. PERT, Clerk

Presented by Representative MITCHELL of Freeport.

Cosponsored by Representative SIMPSON of Casco, Representative COLES of Harpswell and Representative ANDERSON of Woodland.

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STATE OF MAINE

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

---

An Act to Amend the Law Relating to Submerged Land.

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

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

5 C. "Submerged land" means:

7 (1) All land from mean low water or a maximum of 1650  
9 feet seaward of the mean high-water mark, whichever is  
11 less, out to the seaward boundary of coastal waters as  
13 defined in section 6001;

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

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

25 (4) All land lying below the low-water mark of those  
27 rivers that form the State's border with Canada.

29 D. "Commercial fishing activity" means any activity  
31 involving the landing or processing of shellfish, finfish or  
33 other natural products of the sea or other activities  
35 directly related to landing or processing shellfish, finfish  
37 or natural sea products, including fueling, loading or  
39 selling these products.

41 Sec. 2. 12 MRSA §558-A, sub-§2, as amended by PL 1987, c. 765,  
43 §1, is further amended to read:

45 2. Leases. The director may lease, for a term of years not  
47 exceeding 30 and with conditions he the director deems  
reasonable, the right to dredge, fill or erect permanent  
causeways, bridges, marinas, wharves, docks, pilings, moorings or  
other permanent structures on submerged and intertidal land owned  
by the State. The director may refuse to lease submerged lands  
if the director determines that the lease will have a significant  
adverse impact on public trust rights, public access, customs,  
uses and traditions.

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

(1) The director shall charge the lessee a base rent  
that practically approximates the fair market rental  
value of the land. Fair market rental value shall be

1 based on the municipally assessed value for the  
2 adjacent upland. When the director determines that the  
3 adjacent upland is not an accurate indicator of the  
4 value of submerged land, the director may require an  
5 appraisal of the submerged land. The appraisal must be  
6 approved by the director and paid for by the applicant;

7  
8 (2) The director may adjust the base rent, decreasing  
9 it for desirable uses or increasing it for undesirable  
10 ones. In determining the desirability of uses, the  
11 director shall consider the extent to which the use  
12 does not impair the future use of the submerged or  
13 intertidal land for fishing, fowling or navigation,  
14 needs to be located on the submerged land, and exploits  
15 natural renewable resources of the water;

16  
17 ~~(3) The director may revalue rents every 5 years. For~~  
18 ~~leases entered into before and after July 1, 1984,~~  
19 ~~rents shall not exceed 4¢ per square foot increased by~~  
20 ~~10% cumulatively for each year that has elapsed since~~  
21 ~~July 1, 1984, further adjusted by the cumulative~~  
22 ~~increase in the United States Consumer Price Index.~~  
23 ~~Notwithstanding this limit, if an appraisal of the~~  
24 ~~value of the land under a new or existing lease is~~  
25 ~~performed, the director may charge a rent based on~~  
26 ~~subparagraphs (1) and (2). After October 1, 1990, the~~  
27 director may revalue all existing rents to full fair  
28 market value. Rents may be adjusted annually until  
29 full fair market rental value is reached. Thereafter,  
30 the director may revalue rents every 5 years;

31  
32 (4) The director may also lease, ~~for a period of not~~  
33 ~~more than 5 years,~~ a buffer zone of not more than 30  
34 feet in width around a permanent structure located on  
35 submerged or intertidal land, provided the lease is  
36 necessary to preserve the integrity and safety of the  
37 structure and the Commissioner of Marine Resources  
38 consents to that lease;

39  
40 (5) No portion of any existing or proposed lease may  
41 be subleased ~~after August 1, 1988,~~ for a period of time  
42 of more than 5 years for the purpose of providing  
43 berthing space for any boat or vessel. This  
44 subparagraph shall not apply to any existing sublease  
45 or assignments thereof or to any subleasing plan or  
46 arrangement approved by the director prior to April 15,  
47 1988. ~~This subparagraph is repealed 91 days after the~~  
48 ~~adjournment of the First Regular Session of the 114th~~  
49 Legislature; and

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

5 (a) Will not unreasonably interfere with  
7 navigation;

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

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

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

19 The bureau shall promulgate rules pertaining to this  
21 subparagraph by March 15, 1990.

23 B. For dredging, impounded areas and underwater cables and  
25 pipelines, the director shall develop such terms and  
27 conditions as he the director deems reasonable.

29 C. The director shall charge an administrative fee of \$25  
31 \$100 for each lease in addition to any rent.

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

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

39 3. Easements. The director may grant, upon such terms and  
41 conditions as he the director deems reasonable, ~~but without~~  
43 ~~valuable consideration, except for a one-time administrative fee~~  
45 ~~of \$15,~~ assignable easements for a term of years not exceeding 30  
for the use of submerged and intertidal lands for the purposes  
permitted in subsection 2, ~~provided that that use;~~ The lessee  
shall pay an administrative fee of \$50 for each easement at the  
time of processing and a registration fee of \$25 due every 5  
years. The director may grant an easement for submerged lands if  
a structure:

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

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

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

17 D. ~~Is for harbor improvement by the Federal Government.~~

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

23 6. Constructive easements. The owners of all structures  
25 actually upon submerged and intertidal lands on October 1, 1975,  
27 shall be deemed to have been granted a constructive easement for  
29 a term of 30 years on the submerged land directly underlying the  
31 structure. Beginning on January 1, 1991, the bureau shall  
33 undertake a registration program for all structures granted  
35 constructive easements. Constructive easements shall be subject  
37 to administrative and registration fees for easements pursuant to  
39 subsection 3. The director shall develop procedures, rules and  
41 registration forms necessary to accomplish this subsection. The  
43 bureau shall complete the registration of constructive easements  
45 on or before December 31, 1995.

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

49 9. Public compensation. The director may require a lessee  
51 to provide whatever is necessary and appropriate to compensate  
the public for loss or diminution of public access or public  
trust rights. Such provisions shall be in addition to any rental  
fees charged for private use of submerged lands.

53 **Sec. 6. Allocation.** The following funds are allocated from  
55 revenues derived from the Maine Revised Statutes, Title 12,  
57 chapter 202, section 557 to carry out the purposes of this Act.

	1989-90	1990-91
<b>CONSERVATION, DEPARTMENT OF</b>		
<b>Bureau of Public Lands</b>		
<b>Public Lands Management Fund</b>		



1

3

## STATEMENT OF FACT

5

7       This bill incorporates recommendations from a working group  
9       on submerged land established as part of Public Law 1987, chapter  
11       765. That group recommended a new fee structure for submerged  
13       lands to correlate with the municipally assessed value for  
15       adjacent uplands. This increase in fees will be used to fund a  
17       submerged lands coordinator within the Department of  
19       Conservation, Bureau of Public Lands to administer the submerged  
21       land program. This bill also requires that all existing  
      structures with constructive easements be registered and that  
      landowners pay a registration fee and one-time administrative fee.

17       The bureau's authority to deny leases is clarified as well  
19       as the ability of the bureau to require applicants to compensate  
21       the public for any loss of public trust rights or public access.  
      The repealing clause for prohibiting the rental of leases for  
      marinas for more than 5 years is repealed.