

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

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Legislative Document

No. 474

H.P. 344

House of Representatives, February 8, 1991

Reference to the Committee on Marine Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative MITCHELL of Freeport.

Cosponsored by Representative STEVENS of Bangor, Representative HOLT of Bath and Representative RUHLIN of Brewer.

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STATE OF MAINE

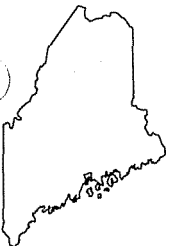
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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-ONE

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An Act to Create the Aquaculture Leasing Board.

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2 E. The lease does not result in a person being a tenant of  
any kind in leases covering an aggregate of more than 150  
4 acres; and

6 F. No single lease may exceed 100 acres in size.

8 **3. Municipal approval.** In any municipality with a shellfish  
conservation program under section 6671, the ~~commissioner~~ board  
10 may not lease more than 2 acres of the intertidal zone within the  
municipality without the consent of the municipal officers.

12 **4. Applications.** The application shall must:

14 A. Be written on forms supplied by the ~~commissioner~~ board;

16 B. Describe the location of the proposed lease tract by  
18 coordinates or metes and bounds;

20 C. Identify the species to be cultivated;

22 D-1. Characterize the physical and ecological impact of the  
project on existing uses of the site and any adverse effects  
24 on the existing uses of the area, as defined by regulation  
promulgated by the ~~Commissioner of Marine Resources~~ board;

26 D-2. Characterize the physical and ecological impact of the  
project on potential uses of the site and any adverse  
28 effects on the potential uses of the area, as defined by  
regulation promulgated by the ~~Commissioner of Marine~~  
30 ~~Resources~~ board;

32 E. Describe the degree of exclusive use required by the  
project;

34 F. Include written permission of every riparian owner whose  
36 land to the low water mark will be actually used;

38 G. Include a map of the lease area and its adjoining waters  
and shorelands, with the names and addresses of the known  
40 riparian owners as listed in the municipal tax records;

42 H. Include an environmental evaluation of the site upon  
which the decision to seek a lease was made. The evaluation  
44 shall must include, but not be limited to, bottom  
characteristics, resident flora, fauna and hydrography of  
46 the site if appropriate for the proposed lease;

48 I. Describe the proposed source of organisms to be grown at  
the site; and

50 J. Include a nonrefundable application fee of at least  
52 \$100, but not more than \$1,000, the amount to be set by the

2 commissioner depending on the proposed acreage, type of  
aquaculture proposed and complexity of the application.

4 5. **Application review.** The ~~commissioner~~ board shall review  
the application and set a hearing date if ~~he~~ the board is  
6 satisfied that the written application is complete, the  
application indicates that the lease could be granted and the  
8 applicant has the financial and technical capability to carry out  
the proposed activities. A copy of the completed application and  
10 notice of hearing shall must be forwarded to the municipality or  
municipalities in which or adjacent to which the lease is  
12 proposed. A municipality shall must be granted intervenor status  
upon written request.

14 5-A. **Site review.** Prior to the lease hearing, the  
16 ~~department~~ board shall conduct an assessment of the proposed site  
and surrounding area to determine the possible effects of the  
18 lease on commercially and ecologically significant flora and  
fauna and conflicts with traditional fisheries. This review shall  
20 must take place between May and September inclusive. This  
information shall must be provided to the intervenors and made  
22 available to the public 30 days before the hearing. As part of  
the site review, the ~~department~~ board shall request information  
24 from the municipal harbor master about designated or traditional  
storm anchorages in proximity to the proposed lease.

26 6. **Hearing procedure.** Prior to granting a lease, the  
28 ~~commissioner~~ board shall hold a hearing. The hearing shall must  
be an adjudicatory proceeding and shall be held in the manner  
30 provided under the Maine Administrative Procedure Act, Title 5,  
chapter 375, subchapter IV and the specific procedures of this  
32 section.

34 A. Notwithstanding the provisions of Title 5, section 9052,  
subsection 1, paragraph A, personal notice of the hearing  
36 shall ~~be required to~~ must be given only to the lessee and  
the known riparian owners, the municipal officials of the  
38 municipality or municipalities in which or adjacent to which  
the lease is located and any interested parties that have  
40 provided a written request for notification.

42 B. Under the provisions of Title 5, section 9052, the  
leasing procedure shall must require notice to the general  
44 public.

46 C. The Department of Environmental Protection and  
Department of Conservation shall must be notified of all  
48 lease applications.

50 7-A. **Decision.** The ~~commissioner~~ board shall grant the  
lease if the proposed project meets the following conditions as  
52 defined by regulation:

- 2 A. Will not unreasonably interfere with the ingress and  
egress of riparian owners;
- 4 B. Will not unreasonably interfere with navigation;
- 6 C. Will not unreasonably interfere with fishing or other  
8 uses of the area taking into consideration the number and  
density of aquaculture leases in an area;
- 10 D. Will not unreasonably interfere with the ability of the  
12 lease site and surrounding areas to support existing  
ecologically significant flora and fauna;
- 14 E. The applicant has demonstrated that there is an  
16 available source of organisms to be cultured for the lease  
site; and
- 18 F. The lease does not unreasonably interfere with public  
20 use or enjoyment within 1,000 feet of municipally owned,  
state-owned state-owned or federally owned beaches and parks  
22 or municipally owned, state-owned state-owned or federally  
owned docking facilities.

24 **7-B. Conditions.** The ~~commissioner~~ board may establish  
26 conditions that govern the use of the leased area and limitations  
on the aquaculture activities. These conditions shall must  
28 encourage the greatest multiple, compatible uses of the leased  
area, but shall must also address the ability of the lease site  
30 and surrounding area to support ecologically significant flora  
and fauna and preserve the exclusive rights of the lessee to the  
32 extent necessary to carry out the lease purpose. The ~~commissioner~~  
board may grant the lease on a conditional basis until the lessee  
34 has acquired all the necessary federal, state and local permits.  
A lease may not be approved unless the ~~commissioner~~ board has  
36 received certification from the Department of Environmental  
Protection that the project will not violate the standards  
38 ascribed to the receiving waters classification, Title 38,  
section 465-B.

40 **8. Preference.** If more than one person applies to lease an  
area, preference shall must be given as follows:

- 42 A. First, to the ~~department~~ board;
- 44 B. Second, to the riparian owner of the intertidal zone  
46 within the leased area;
- 48 C. Third, to fishermen who have traditionally fished in or  
near the proposed lease area; and
- 50 D. Fourth, to the riparian owner within 100 feet of leased  
52 coastal waters.

2           **9. Rents.** After consulting with the Director of the Bureau  
of Public Lands, the ~~commissioner~~ board shall determine the rent  
4 which shall must be paid under each lease. The rent shall must  
represent a fair value based upon the use of and any structures  
6 in the leased area, but in no instance may the rental fee be set  
at less than \$50 an acre. The ~~commissioner shall have~~ board has  
8 the discretion to increase the rental fees for categories of  
leases. These changes may take effect over the term of a lease.  
10 The ~~commissioner~~ board also may discount a portion of the rental  
fee during the first 2 years of operation of a new lease. This  
12 discounted rate shall may not be less than \$50 an acre.

14           **10. Lessee's actions.** After being granted a lease, each  
lessee shall:

16           A. Record the lease in the registry of deeds of each county  
18 in which the leased area is located;

20           B. Publish a notice in the newspaper in which the  
~~commissioner~~ board published notice or would have published  
22 notice of any public hearing. The notice shall must describe  
the area leased and enumerate any restriction in the leased  
24 area;

26           C. Mark the leased area in a manner prescribed by the  
~~commissioner~~ board; and

28           D. Annually submit to the department board a seeding and  
30 harvesting report for the past year and plan for the coming  
year. Upon written request, a copy of the report shall must  
32 be provided by the department board to the municipality or  
municipalities in which or adjacent to which the lease is  
34 located.

36           **11. Revocation.** The lease shall must be monitored by the  
department board on an annual basis. If substantially no research  
38 or aquaculture has been conducted within the preceding year, or  
if it has been conducted in a manner substantially injurious to  
40 marine organisms, or if any other condition of the lease has been  
violated, the ~~commissioner~~ board shall initiate revocation  
42 proceedings and may revoke the lease. A lease revocation shall ~~be~~  
is an adjudicatory proceeding under the Maine Administrative  
44 Procedure Act, Title 5, chapter 375, subchapter IV. A hearing  
with public notice shall must be held prior to revoking any lease.

46           **12. Renewal.** The ~~commissioner~~ board shall grant a lease  
renewal unless the prior lessee has not complied with the lease  
48 agreement during its term, substantially no research or  
aquaculture has been conducted, the ~~commissioner~~ board finds that  
50 it is not in the best interest of the State to renew the lease or  
the renewal will cause the lessee to continue being a tenant of  
52 any kind in leases covering an aggregate of more than 150 acres.

2 Renewals may be granted if applied for no later than 30 days  
3 after the lapse of the prior lease. A lease renewal shall ~~be~~ is  
4 an adjudicatory proceeding under the Maine Administrative  
5 Procedure Act, Title 5, chapter 375, subchapter IV. Public notice  
6 shall ~~must~~ be given as required under subsection 6 ~~of this~~  
7 section and a hearing shall ~~must~~ be held if it is requested in  
8 writing by 5 persons.

10 **12-A. Transferability.** A lease may be transferred to  
11 another person for the remaining portion of its term subject to  
12 the following conditions.

14 A. Lease transfers shall ~~be~~ are subject to the same  
15 procedural requirements as initial applications, except that  
16 a public hearing is not mandatory unless requested in  
17 writing by 5 persons.

18 B. The ~~commissioner~~ board may grant lease transfers if he  
19 ~~determines that:~~

20 (1) The change in lessee does not violate any of the  
21 standards in subsection 7 7-A or 7-B;

24 (2) The transfer is not intended to circumvent the  
25 intent of subsection 8;

26 (3) The transfer is not for speculative purposes; and

28 (4) The transfer will not cause the transferee to be a  
29 tenant of any kind in leases covering an aggregate of  
30 more than 150 acres.

32 **13. Regulations.** The ~~commissioner~~ board may adopt or amend  
33 regulations:

36 A. Establishing minimum standards for maintaining leases;

38 B. For procedures to issue, transfer, review or revoke  
39 leases;

40 C. For notices and hearings to the extent that those  
41 procedures are not established by this section or the Maine  
42 Administrative Procedure Act, Title 5, chapter 375;

44 D. For regulating the harvest of wild organisms to be  
45 cultured on aquaculture leases;

48 E. For establishing and revaluing fees and rents related to  
49 aquaculture; and

50 F. For defining application requirements and decision  
51 criteria.



