

MAINE STATE LEGISLATURE

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STATE OF MAINE
SENATE
116TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 315, L.D. 948, Bill, "An Act Relating to the Portland Harbor Commission and Portland Harbor"

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. P&SL 1981, c. 98, §2, first ¶, as amended by P&SL 1989, c. 61, §1, is further amended to read:

Sec. 2. Commission established. There is established a Board of Harbor Commissioners for Portland Harbor, which shall-be is a public body corporate and politic and is charged with responsibility for the regulation of navigation and commerce within Portland Harbor in accordance with the provisions of this Act. The commission shall-~~consist~~ consists of 7 5 members and shall-~~have~~ has a quorum of -4- 3 members. Two members of the commission shall must be appointed by the City of Portland, and these members shall must be and continue to be residents of the City of Portland during tenure. Two members of the commission shall must be appointed by the City of South Portland, and these members shall must be and continue to be residents of the City of South Portland. ~~Three members~~ One member of the commission shall must be appointed by the Governor, with the concurrence of the ~~City-Councils~~ city councils of Portland and South Portland. ~~One of the gubernatorial appointees shall be a holder of a commercial fishing license and one of the gubernatorial appointees shall be a person representing commercial, marine or shipping interests.~~ All appointments shall-be are for terms of 3 years and shall must be staggered. Members appointed to fill a vacancy shall serve for the remainder of the unexpired term. Each member shall continue to serve after expiration of that member's term until a successor is appointed and qualified provided that service shall may not continue in excess of 60 days after expiration of the

term. The 7 5 members appointed shall annually elect from their own membership a chair and a clerk, and may from time to time adopt such procedural rules as are necessary for the proper conduct of the business of the commission. A member may be removed for cause or, in the case of those members appointed by the city councils, upon a determination that the member is not a resident. Removal shall must be by the appointing council or, in the case of the gubernatorially appointed members member, by the Governor with concurrence of both of the 2 councils.

Sec. 2. P&SL 1981, c. 98, §6 is amended to read:

Sec. 6. Rulemaking. The commission shall from time to time adopt such rules as it ~~deems~~ considers necessary and proper, not inconsistent with law, for keeping open convenient channels for the passage of vessels, promoting navigational safety in the waters under its control and protecting persons having riparian rights, including, without limitation, procedures, standards and fees, and subject to the provisions of section 5, subsection 1 of this Act for the issuance of permits to build or extend wharves and other structures or to fill or excavate; to limit the speed of vessels within the harbor; to permit moorings; and to cause the removal of derelict and abandoned vessels. The commission may impose reasonable penalties by rule for violation of the rules, which penalties shall may not be in excess of \$500 a day for each violation. The commission shall ~~not promulgate~~ may not adopt any rule other than as an emergency without first presenting such the rule to the Department of Transportation, ~~Bureau of Transportation Planning and Services~~ for review and comment. The commission shall send any proposed rules to the councils of each city at the same time the proposed rules are sent to the Department of Transportation. Thereafter the commission shall hold a public hearing, preceded by publication, as to the subject matter of the rule and the time and place of the public hearing, at least 7 days prior to the hearing. The rules shall ~~be~~ are effective 45 days from the date on which notice of such rulemaking is sent to the ~~City Managers~~ city managers of Portland and South Portland, addressed to the ~~City Councils~~ city councils of the cities, unless either ~~City Council~~ city council takes official action disapproving the rule or rules, in whole or in part, prior to the expiration of the 45-day period. All rules of the commission shall remain in effect until repealed or amended, as provided in this section, or when limited by the terms thereof of this section. When the commission determines that an emergency involving the public health, safety or welfare requires that a rule take effect immediately, it may ~~promulgate such~~ adopt that rule with immediate effect upon notice to the ~~City Councils~~ city councils and such findings shall ~~be~~ are conclusive, provided that the reasons constituting the emergency are set forth ~~therein~~ in the notice. Such emergency rules shall

be-effective-for-not may not be effective for more than 14 days,
unless extended after a public hearing after 7 days' prior
published notice. In no case shall may such rule be extended for
a period in excess of 60 days from the date originally
~~promulgated~~ adopted and the rule shall-~~expire~~ expires immediately
upon disapproval by either City-Council city council.

Sec. 3. P&SL 1981, c. 98, §7, sub-§1 is amended to read:

1. Harbor master and deputy; appointment. The rules of the
commission shall must be enforced and carried out by a harbor
master and one or more deputy harbor masters appointed by the
commission. Rules of the commission may be enforced and carried
out by Portland and South Portland police officers as provided in
subsection 4. It shall-be is the duty of the harbor master or
his the harbor master's deputies to collect in the name of the
commission all penalties incurred for the violation of such rules
and-the-money-so-received-shall-be-applied-by-the-commission-to
carry-out-the-purpose-of-this-Act. The appointment of the harbor
master and of any deputy harbor master shall-be is by the
commission pursuant to rules of the commission adopted pursuant
to section 6. The persons so appointed shall--~~receive~~ are
entitled to compensation fixed by rules of the commission as
provided in section 6. Each deputy shall-have has all the powers
and authority of the harbor master. The harbor master and
deputies shall hold office for a term of one year from the date
of approval of the appointment, but either may be removed by the
commission at any time during such term, for cause, after notice
and an opportunity to be heard. The commission shall fill any
vacancy only for the remainder of the term, provided that such
appointment shall-be is approved by the City--Councils city
councils.

Sec. 4. P&SL 1981, c. 98, §7, sub-§4 is enacted to read:

4. Enforcement. In addition to their powers as police
officers, Portland or South Portland police officers have all the
powers conferred upon the Portland harbor master by state law,
municipal ordinance, this Act or rules adopted pursuant to this
Act, except that police officers may not exercise the powers of
harbor masters to assign moorings under the Maine Revised
Statutes, Title 38, section 3. Police officers from Portland or
South Portland may exercise these powers anywhere within Portland
Harbor. Nothing in this section may be construed to limit the
authority granted by state law to harbor commissions, harbor
masters, deputy harbor masters or police officers.

Sec. 5. P&SL 1981, c. 98, §10 is amended to read:

2 **Sec. 10. Appropriations and budget approval by cities.** Each city
4 may appropriate or lend such money or contribute such services
6 for the use of the commission as it deems considers reasonable
8 and proper to further the purposes of this Act. The commission's
10 fiscal year ~~shall--run~~ runs from July 1st to June 30th. The
12 commission shall submit its annual budget to the Portland City
14 Council and the South Portland City Council no later than March
16 1st of each year. Each city must act upon the commission's
18 budget prior to July 1st. Unless approved by the city council of
20 each city, the commission may not spend more money than the
22 amount authorized in its approved budget. Any surplus at the end
24 of the fiscal year may not lapse but must be carried forward and
26 accounted for by the commission in its next budget submission.

28 **Sec. 6. P&SL 1989, c. 61, §§2 and 3** are repealed.

30 FISCAL NOTE

32 The additional local costs of certain budget and rule-making
34 requirements will require 90% funding by the State as a state
36 mandate pursuant to the Constitution of Maine. The General Fund
38 appropriations required to fund these costs can not be estimated
40 at this time.'

42 STATEMENT OF FACT

44 This amendment reduces the number of members on the Board of
46 Harbor Commissioners for Portland Harbor from 7 to 5 and
48 eliminates the requirement that one of the members be a person
50 who holds a commercial fishing license and that one of the
52 members be a person representing commercial, marine or shipping
54 interests.

56 The amendment requires the commission to send proposed rules
58 to the cities of Portland and South Portland at the same time the
60 proposed rules are sent to the Department of Transportation.

62 The amendment allows Portland and South Portland police
64 officers to enforce rules adopted by the commission and confers
66 on those officers all the powers held by the Portland harbor
68 master by state law, municipal ordinance or rules adopted by the
70 commission, except for the assignment of moorings. Under the
72 amendment, Portland and South Portland police officers may
74 exercise police powers and the powers granted to the harbor
76 master anywhere within Portland Harbor.

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COMMITTEE AMENDMENT "A" to S.P. 315, L.D. 948

2 The amendment requires the commission to submit its budget
to the cities of Portland and South Portland and prohibits the
4 commission from spending any funds that are not approved by the
city councils of both those cities.

6 The amendment repeals provisions enacted in 1989 that allow
the commission to establish fees for services provided by the
8 Portland harbor master and require the harbor master to collect
those fees from wharf, slip and dock owners.

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Reported by the Majority for the Committee on Marine
Resources. Reproduced and Distributed Pursuant to Senate
Rule 12.
(5/13/93)

(Filing No. S-144)

COMMITTEE AMENDMENT