

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

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Legislative Document

No. 948

S.P. 315

In Senate, March 18, 1993

**An Act Relating to the Portland Harbor Commission and Portland Harbor.**

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

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator CONLEY of Cumberland.

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

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

6       **Sec. 2. Commission established.** There is established a Board  
8 of Harbor Commissioners for Portland Harbor, which ~~shall be~~ is a  
10 public body corporate and politic and is charged with  
12 responsibility for the regulation of navigation and commerce  
14 within Portland Harbor in accordance with the provisions of this  
16 Act. The commission ~~shall consist~~ consists of 7 5 members and  
18 ~~shall have~~ has a quorum of 4 3 members. Two members of the  
20 commission ~~shall~~ must be appointed by the City of Portland, and  
22 these members ~~shall~~ must be and continue to be residents of the  
24 City of Portland during tenure. Two members of the commission  
26 ~~shall~~ must be appointed by the City of South Portland, and these  
28 members ~~shall~~ must be and continue to be residents of the City of  
30 South Portland. ~~Three members~~ One member of the commission ~~shall~~  
32 must be appointed by the Governor, with the concurrence of the  
34 City Councils of Portland and South Portland. ~~One of the~~  
36 ~~gubernatorial appointees shall be a holder of a commercial~~  
38 ~~fishing license and one of the gubernatorial appointees shall be~~  
~~a person representing commercial, marine or shipping interests.~~  
All appointments ~~shall~~ must be 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  
does 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, by the  
Governor with concurrence of both of the 2 councils.

40       **Sec. 2. P&SL 1981, c. 98, §5, sub-§1** is amended to read:

42       **1. Creation or maintenance of any obstruction.** The  
44 creation and maintenance of any obstruction in any of the  
46 navigable waters of the harbor, or in any part of the harbor  
48 under the jurisdiction of the commission, except by the United  
50 States, without first obtaining a written permit from the  
commission, is prohibited. It is unlawful to enlarge or extend  
any wharf heretofore built, build any wharf, pier, dolphin,  
bulkhead or other structure, dump any stones or any other  
material into any of the waters, or upon any part of the flats,

2 excavate any part of the harbor, fill in any part of the harbor  
or modify the course, location or condition of the water of the  
4 harbor without a permit from the ~~commission~~ building inspector of  
the appropriate city for such purpose. The ~~commission~~ shall  
6 building inspector may not issue any such permit when it the  
inspector determines that the activity will substantially or  
8 unreasonably interfere with navigation or injure the rights of  
others or does not comply with applicable state and local laws.  
10 Before issuing any permit under this section, the building  
inspector must consult with the commission.

12 **Sec. 3. P&SL 1989, c. 98, §5, sub-§4 is enacted to read:**

14 4. Mooring permits. The commission shall grant mooring  
permits pursuant to rules adopted by the commission. A rule in  
16 effect on the effective date of this subsection remains in full  
force and effect, except that mooring fees must be delivered  
18 within 10 days of collection by the commission to the city where  
the mooring is located.

20 **Sec. 4. P&SL 1981, c. 98, §6 is amended to read:**

22 **Sec. 6. Rulemaking.** The commission shall from time to time  
24 adopt such rules as it deems considers necessary and proper, not  
inconsistent with law, for keeping open convenient channels for  
26 the passage of vessels,; promoting navigational safety in the  
waters under its control and; protecting persons having riparian  
28 rights, including, without limitation, procedures, standards and  
fees, ~~and subject to the provisions of section 5, subsection 1 of~~  
30 ~~this Act for the issuance of permits to build or extend wharves~~  
~~and other structures or to fill or excavate; to limited~~ limiting  
32 the speed of vessels within the harbor; to permit permitting  
moorings; and to cause causing the removal of derelict and  
34 abandoned vessels. The commission may impose reasonable  
penalties by rule for violation of the rules, which penalties  
36 shall may not be in excess of \$500 a day for each violation. The  
commission shall may not promulgate adopt any rule other than as  
38 an emergency without first presenting such rule to the Department  
of Transportation, Bureau of Transportation Planning and Services  
40 for review and comment. Thereafter, the commission shall hold a  
public hearing, preceded by publication, as to the subject matter  
42 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  
44 effective 45 days from the date on which notice of such  
rulemaking is sent to the City Managers of Portland and South  
46 Portland, addressed to 30 days after approval by the City  
Councils of the cities, unless either City Council takes official  
48 action disapproving the rule or rules, in whole or in part, prior  
to the expiration of the 45 day period. All rules of the  
50 commission shall remain in effect until repealed or amended, as  
provided in this section, or when limited by the

2 terms thereof. When the commission determines that an emergency  
3 involving the public health, safety or welfare requires that a  
4 rule take effect immediately, it may ~~premulgate~~ adopt such rule  
5 with immediate effect upon notice to the City Councils and such  
6 findings ~~shall--be~~ are conclusive, provided that the reasons  
7 constituting the emergency are set forth therein. Such emergency  
8 rules ~~shall~~ may be effective for not more than 14 days, unless  
9 extended after a public hearing after 7 days' prior published  
10 notice. In no case ~~shall~~ may such rule be extended for a period  
11 in excess of 60 days from the date originally ~~premulgated~~ adopted  
12 and the rule ~~shall--expire~~ expires immediately upon disapproval by  
13 either City Council.

14 **Sec. 5. P&SL 1981, c. 98, §7, sub-§1, first sentence is amended to**  
15 **read:**

16 The Applicable state and local laws and the rules of the  
17 commission shall must be enforced and carried out by a harbor  
18 master and, one or more deputy harbor masters appointed by the  
19 commission and Portland and South Portland police officers. City  
20 police officers have the same enforcement authority conferred  
21 upon harbor masters under the provisions of general law and this  
22 Act and their authority extends throughout Portland Harbor.  
23

## 24

### 26 STATEMENT OF FACT

27 This bill makes the following changes to the laws governing  
28 the Board of Harbor Commissioners for Portland Harbor.

29 1. It reduces from 7 to 5 the number of commission members,  
30 reduces from 4 to 3 the number of members necessary for a quorum  
31 and changes from 3 to one the number of commissioners to be  
32 appointed by the Governor.  
33

34 2. It transfers authorization for granting permits for the  
35 creation and maintenance of certain obstructions from the harbor  
36 commission to the local municipal building inspector.  
37

38 3. It authorizes the commission to grant mooring permits  
39 and requires delivering of mooring fees within 10 days of  
40 collection by the commission to the city in which the mooring is  
41 located.  
42

43 4. It alters the effective date of rules adopted by the  
44 commission.  
45

46 5. It authorizes the enforcement of harbor rules by South  
47 Portland and Portland police officers and of applicable state and  
48 local laws by the harbor master and deputy harbor masters.  
49  
50