

MAINE STATE LEGISLATURE

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L.D. 1404

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DATE: 2/28/96

(Filing No. H- 728)

AGRICULTURE, CONSERVATION AND FORESTRY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 993, L.D. 1404, Bill, "An Act to Amend the Law Regarding the Lease of Submerged Lands"

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. 5 MRSA §12004-I, sub-§24-E is enacted to read:

24-E. Environ-	Submerged	Not Autho-	12 MRSA
ment: Natural	Lands	rized	§558-C
Resources	Advisory		
	Board		

Sec. 2. 12 MRSA §557-A, as enacted by PL 1991, c. 427, §2, is repealed.

Sec. 3. 12 MRSA §557-B is enacted to read:

§557-B. Submerged Lands Fund

1. Fund established. All revenues from the activities of the bureau under section 558-A must be deposited with the Treasurer of State to be credited to the Submerged Lands Fund, which is established as a nonlapsing, dedicated fund and referred to in this section as the "fund." Any interest earned on this money must be credited to the fund. The fund is administered by the bureau.

COMMITTEE AMENDMENT

2 2. Permissible uses. Money credited to the fund may be
3 used to manage submerged lands pursuant to section 558-A, provide
4 grants to municipalities pursuant to section 558-B and remove
5 abandoned watercraft pursuant to chapter 202-C.

6 3. Expenditure of funds. Money in the fund must be
7 expended on the operating expenses of the bureau's submerged
8 lands leasing program pursuant to section 558-A. Any funds
9 available in excess of the amount needed for the bureau's
10 submerged lands operating expenses must be expended in accordance
11 with section 558-B and chapter 202-C.

12 Sec. 4. 12 MRSA §558-A, sub-§2, ¶A, as amended by PL 1991, c.
13 430, §2 and affected by §3, is further amended by amending
14 subparagraph (1), division (f) to read:

15 (f) A reduction factor of ~~10%~~ 2% for upland uses
16 and fill. Upland uses include, but are not
17 limited to, all uses that can operate in a
18 location other than on the waterfront or which
19 that are not essential to the operation of the
20 marine industry. Such ~~These~~ facilities include,
21 but are not limited to, residences, offices,
22 restaurants and parking lots. Fill must include
23 the placement of solid material other than pilings
24 or other open support structures upon submerged
25 lands.

26 Sec. 5. 12 MRSA §558-A, sub-§2, ¶D, as repealed and replaced by
27 PL 1989, c. 878, Pt. A, §30, is amended to read:

28 D. The director may establish a reasonable minimum rent to
29 which any lease is subject, but it shall ~~may~~ not exceed \$75
30 \$100 per year.

31 Sec. 6. 12 MRSA §558-A, sub-§2, ¶E is enacted to read:

32 E. Beginning January 1, 1997, the maximum rent to which any
33 lease is subject may not exceed \$1,200 per year.

34 Sec. 7. 12 MRSA §558-A, sub-§2-A is enacted to read:

35 2-A. Lease renewal. A lessee who is in compliance with all
36 terms of that person's lease may apply at any time to renew the
37 lease. The director shall approve the lease renewal if the
38 existing lease complies with, or can be amended to comply with,
39 all applicable laws, rules and public trust principles in effect
40 at the time of renewal application. This subsection applies to
41 all leases in effect on the effective date of this subsection and

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2 to all leases executed on or subsequent to the effective date of
3 this subsection.

4 **Sec. 8. 12 MRSA §558-A, sub-§3**, as amended by PL 1989, c. 338,
5 §3, is further amended to read:

6
7 **3. Easements.** The director may grant, upon such terms and
8 conditions as the director ~~deems~~ considers reasonable, assignable
9 easements for a term of years not exceeding 30 for the use of
10 submerged and intertidal lands for the purposes permitted in
11 subsection 2. The lessee grantee shall pay an administrative fee
12 of \$50 for each easement at the time of processing and a
13 registration fee of \$25 ~~\$50~~ due every 5 years. The director may
14 refuse to grant an easement for the use of submerged lands if the
15 director determines the easement will unreasonably interfere with
16 customary or traditional public access ways to, or public trust
17 rights in, on or over the intertidal or submerged lands and the
18 waters above those lands. The director may grant an easement for
19 submerged lands if a structure:

20
21 A. Is for the exclusive benefit of the abutting upland
22 owner for charitable purposes as defined in the United
23 States Internal Revenue Code, Section 501, (c) (3);

24
25 B. Occupies a total of not more than 500 square feet of
26 submerged land for any lawful purpose and is permanent; or

27
28 C. Occupies a total of not more than 2,000 square feet of
29 submerged land for the exclusive purpose of commercial
30 fishing activities and is permanent.

31
32 D.

33
34 **Sec. 9. 12 MRSA §558-A, sub-§6**, as repealed and replaced by PL
35 1989, c. 338, §4, is amended to read:

36
37 **6. Constructive easements.** The owners of all structures
38 actually upon submerged and intertidal lands on October 1, 1975,
39 ~~shall-be~~ are deemed to have been granted a constructive easement
40 for a term of 30 years on the submerged land directly underlying
41 the structure. Beginning on January 1, 1991, the bureau shall
42 undertake a registration program for all structures granted
43 constructive easements. Constructive easements ~~shall--be~~ are
44 subject to administrative and registration fees for easements
45 pursuant to subsection 3. The director shall develop procedures,
46 rules and registration forms necessary to accomplish the purposes
47 of this subsection. The bureau shall complete the registration
48 of constructive easements on or before December 31, ~~1995~~ 1996.

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2 Sec. 10. 12 MRSA §558-A, sub-§11, as renumbered by RR 1991, c.
3, §36, is amended to read:

4 11. **Revenues.** All revenues from the bureau's activities
5 under this section accrue to the Submerged Lands Fund established
6 in section 557-A 557-B.

7 Sec. 11. 12 MRSA §558-C is enacted to read:

8
9 §558-C. Submerged Lands Advisory Board

10 1. Appointment and composition. The Submerged Lands
11 Advisory Board, referred to in this section as the "board" and
12 established by Title 5, section 12004-I, subsection 24-E,
13 consists of 8 members. The director shall serve as an ex
14 officio, nonvoting member. The 7 other members are appointed by
15 the Governor as follows:

16 A. One member who is a submerged land lessee or grantee;

17 B. One member who represents the general public;

18 C. One member who represents anglers, hunters and
19 recreational boaters;

20 D. One member who represents municipalities;

21 E. One member with expertise in the subject of public
22 trust, as it pertains to the State's submerged lands;

23 F. One member who represents commercial fishing; and

24 G. One member who represents marinas.

25 2. Terms. Members of the board serve for 3 years and
26 continue serving until a successor is duly appointed and
27 qualified. When a vacancy occurs, the Governor shall fill the
28 vacancy by appointing a member from the same category, listed in
29 subsection 1, as the member who vacated the board and that member
30 serves on the board for the remainder of the term.

31 3. Compensation. Board members serve without compensation.

32 4. Purpose. The board shall provide to the director advice
33 and information on the management of submerged lands, including,
34 but not limited to, the following:

35 A. A fee structure for the leasing of submerged lands that
36 becomes effective when constructive easements expire;

2 B. The submerged lands lease application process; and

4 C. An appeals process for the director's decisions relating
6 to submerged lands leases and easements.

8 5. Chair and officers. The board shall annually choose one
10 of its appointed members to serve as chair for a one-year term.
12 The board may select other officers and designate their duties.
14 The director may not serve as chair or as an officer.

16 6. Meetings. The board shall meet at least 2 times a
18 year. The board may also meet at other times at the call of the
20 chair or the chair's designee, or the director or the director's
22 designee.

24 7. Staffing. The bureau shall provide staffing services to
26 the board.

28 Sec. 12. 12 MRSA §594, sub-§5, as enacted by PL 1991, c. 427,
30 5, is amended to read:

32 5. Disposal of watercraft. If the director removes a
34 watercraft from coastal waters under this section, the director
36 may sell the watercraft. Any proceeds from the sale must first
38 be applied to the costs to the State directly related to the
40 expense of removal of the watercraft. The money may then be
42 applied to any liens against the watercraft. Any money that
44 remains must accrue to the Submerged Lands Fund established under
46 section 557-A 557-B.

48 Sec. 13. Effective date. Those sections of this Act that amend
50 the Maine Revised Statutes, Title 12, section 558-A, subsection
2, paragraphs A and D and subsection 3 take effect January 1,
1997.

Sec. 14. Transition provisions; advisory board. When making
initial appointments to the Submerged Lands Advisory Board
pursuant to the Maine Revised Statutes, Title 12, section 558-C,
the Governor shall make the appointments in accordance with the
following: The Governor shall appoint to one-year terms one
person who is a submerged land lessee or grantee and one person
who represents the general public; the Governor shall appoint to
2-year terms one person who represents anglers, hunters and
recreational boaters and one person who represents
municipalities; and the Governor shall appoint to 3-year terms
one person with expertise in the subject of public trust, as it
pertains to the State's submerged lands, one person who
represents commercial fishing and one person who represents
marinas. Subsequent appointments for the positions held by these

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members must be for 3-year terms. The purpose of these initial appointments is to stagger the terms of council members.'

Further amend the bill by inserting at the end before the statement of fact the following:

FISCAL NOTE

1996-97

REVENUES

General Fund	(\$6,000)
Other Funds	142,200

The dedication of interest income from the balances in the Submerged Lands Fund will reduce General Fund revenue by \$6,000 per year beginning in fiscal year 1996-97.

The changes in the laws governing the lease of submerged lands and dedicating the interest earned on balances in the Submerged Lands Fund will result in a first year increase of dedicated revenue of \$142,200 in fiscal year 1996-97. Beginning in fiscal year 1997-98, this bill results in a net annual reduction of dedicated revenue to the Submerged Lands Fund from fiscal year 1997-98 through fiscal year 2000-01 of approximately \$45,000. The balance in the account at the end of fiscal year 1996-97, the projected revenues through fiscal year 2000-01 and the normal growth in the number of leases will be sufficient to cover the anticipated costs of the submerged lands program until fiscal year 2001-02 when the program will receive another significant net revenue increase.

The Department of Inland Fisheries and Wildlife will incur some minor additional costs to comply with new registration requirements for submerged land leases. These costs can be absorbed within the department's existing budgeted resources.'

STATEMENT OF FACT

The amendment replaces the bill and makes several changes to the submerged lands laws. The amendment:

1. Requires interest earned from submerged lands income be credited to the Submerged Lands Fund;

2. Reduces the annual lease rent paid for upland uses from 10% to 2% of the municipally assessed value per square foot of adjacent upland;

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2 3. Authorizes the renewal of a lease at any time, provided
4 the terms of an existing lease are met at the time of renewal
5 application. If a lease does not conform with all applicable
6 laws, regulations and public trust principles in effect at the
7 time of renewal, the lease must be amended to reflect current
8 law, rules and principles;

9 4. Raises the minimum annual rent for a submerged lands
10 lease from \$75 to \$100;

11 5. Establishes a maximum rent of \$1,200 for any lease;

12 6. Raises the registration fee for easements from \$25 every
13 5 years to \$50 every 5 years;

14 7. Extends, to December 31, 1996, the deadline for the
15 Bureau of Parks and Lands to register all structures that were
16 upon submerged and intertidal lands as of October 1, 1975; and

17 8. Establishes the Submerged Lands Advisory Board to
18 provide advice and information to the Director of the Bureau of
19 Parks and Lands on the management of submerged lands.
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