

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1404

H.P. 993

House of Representatives, April 21, 1995

An Act to Amend the Law Regarding the Lease of Submerged Lands.

Received by the Clerk of the House on April 19, 1995. Referred to the Committee on Agriculture, Conservation and Forestry and ordered printed pursuant to Joint Rule 14.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative KILKELLY of Wiscasset.
Cosponsored by Representative GOULD of Greenville and
Representatives: CHARTRAND of Rockland, DEXTER of Kingfield, DiPIETRO of South
Portland, GATES of Rockport, HARTNETT of Freeport, HEINO of Boothbay, JOYCE of
Biddeford, KERR of Old Orchard Beach, KONTOS of Windham, LEMONT of Kittery,
MARSHALL of Eliot, MITCHELL of Vassalboro, OTT of York, PEAVEY of Woolwich,
REED of Falmouth, RICE of South Bristol, SIMONEAU of Thomaston, SPEAR of
Nobleboro, TYLER of Windham, WINGLASS of Auburn, Senators: BUTLAND of
Cumberland, GOLDTHWAIT of Hancock, PINGREE of Knox, SMALL of Sagadahoc.

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

4 **Sec. 1. 5 MRSA §12004-D, sub-§5** is enacted to read:

6 5. Submerged Lands Expenses 12 MRSA §558-D
Public Trust Review Board Only

8 **Sec. 2. 12 MRSA §558-A**, as corrected by RR 1991, c. 2, §36,
10 is repealed.

12 **Sec. 3. 12 MRSA §558-B, sub-§3**, as enacted by PL 1991, c. 427,
§4, is amended to read:

14 **3. Revenues.** Annual revenues in excess of the operating
16 expenses of the submerged lands leasing program described in
section 558-A 558-C and the expenses of the abandoned watercraft
18 program described in chapter 202-C must be deposited in the fund.

20 **Sec. 4. 12 MRSA §§558-C and 558-D** are enacted to read:

22 **§558-C. Submerged and intertidal lands of the State**

24 **1. Definitions.** As used in this chapter, unless the
context otherwise indicates, the following terms have the
26 following meanings.

28 **A. "Fishing activity"** means any activity involving the
landing or processing of shellfish, finfish or other living
resources of the sea or other activities, including fueling,
30 directly related to landing, processing, loading or selling
of shellfish, finfish or other living resources of the sea.

32 **B. "Occupying"** refers to the total area of the structure or
alteration itself to the extent that the area within its
34 boundaries is directly upon or over submerged lands.

36 **C. "Permanent"** means occupying submerged and intertidal
lands held in trust by the State during 7 or more months
38 during any one calendar year.

40 **D. "Public trust uses"** means uses of submerged or
intertidal lands of the State by public and private entities
42 that are reasonably calculated to directly facilitate
customary or traditional water-dependent uses, including but
44 not limited to navigation, fowling, fishing and other
activities by which those entities may use, enjoy and have
46 access to the public waters and submerged and intertidal
lands of the State.

48 **E. "Submerged land"** means:
50

2 (1) All land from the mean low-water mark or a maximum
4 of 1,650 feet seaward to the mean high-water mark,
6 whichever is closer to the mean high-water mark, out to
8 the seaward boundary of coastal waters as defined in
10 section 6001;

12 (2) All land below the mean low-water mark of tidal
14 rivers upstream to the farthest natural reaches of the
16 tides;

18 (3) All land below the natural mean low-water mark of
20 ponds that in their natural state are 10 or more acres
22 in size; and

24 (4) The river bed of international boundary rivers,
26 defined as all land lying between defined banks,
28 created by the action of surface water and
30 characterized by a lack of terrestrial vegetation and
32 devoid of topsoil, and the international boundary line.

34 F. "Upland uses" include those activities that do not
36 directly facilitate public trust uses and that ordinarily
38 and customarily occur at a location other than on submerged
40 lands.

42 **2. Public trust use of submerged and intertidal lands.**

44 Public or privately-owned entities that facilitate public trust
46 uses within the meaning of subsection 1, paragraph D are
48 conditionally permitted use of submerged and intertidal lands of
50 the State as long as their structures are not converted to or
 used primarily in support of upland uses. Those structures may
 include, but are not limited to, boat ramps, piers, docks,
 wharves, marinas, boatyards, boat clubs and other facilities
 located in, on or over submerged lands and reasonably calculated
 to directly facilitate public trust uses.

The Director of the Bureau of Public Lands shall establish a
 program for registration by the Bureau of Public Lands of those
 structures exempt from lease under this section as directly
 facilitating public trust uses. Those structures must be
 registered with the bureau, beginning on February 1, 1996. The
 director shall require a registration fee of \$100 and may require
 those structures to be reregistered periodically, but no more
 frequently than once every 5 years.

3. Leases. The director may lease for a term and upon such
 conditions as the director determines reasonable the right to
 dredge and fill, and to erect permanent causeways, bridges,
 pipelines, underwater cables or other permanent structures that
 do not facilitate public trust uses in, on or over submerged and
 intertidal land held in trust by the State, provided the director

2 determines that the lease will not unreasonably diminish,
3 encumber or interfere with the public access ways or public trust
4 rights in, on or over the intertidal or submerged lands and the
5 water above those lands.

6 A. For fill, permanent causeways, bridges, pipelines,
7 underwater cables or other permanent structures, the
8 director shall collect from the lessee reasonable public
9 compensation for those public trust rights diminished or
10 encumbered by the lessee's occupying the submerged or
11 intertidal land.

12 B. The director may also lease a buffer zone of not more
13 than 30 feet in width around a permanent structure located
14 on submerged or intertidal land, provided the lease is
15 necessary to preserve the integrity and safety of the
16 structure and the Commissioner of Marine Resources consents
17 to that lease.

18 C. The director may grant the proposed lease if the
19 director finds that the proposed lease:

20 (1) Will not unreasonably diminish, encumber or
21 interfere with the public trust rights of the people of
22 this State; and

23 (2) Will not unreasonably interfere with the riparian
24 rights of private property owners.

25 D. For dredging impounded areas and underwater cables and
26 pipelines, the director shall establish such additional
27 terms and conditions of lease as the director determines
28 reasonable.

29 E. The director shall require a one-time administrative fee
30 of \$100 for each lease in addition to any public
31 compensation required as a condition of that lease.

32 **4. Constructive easements.** Those permanent structures
33 actually upon submerged and intertidal lands on October 1, 1975
34 are deemed benefited by a constructive easement on that submerged
35 land directly underlying the structure until October 1, 2005.
36 Beginning on January 1, 1991, the bureau must undertake a
37 registration program for all structures benefited by constructive
38 easements. The bureau must complete the registration of
39 constructive easements on or before December 31, 1995.

40 **5. Consultation.** The director and the board may consult
41 with the Commissioner of Conservation, the Commissioner of Marine
42 Resources, the Commissioner of Inland Fisheries and Wildlife and
43 the Commissioner of Environmental Management.

2 other agencies or organizations determined appropriate for the
3 administration of this section.

4 6. Rules. The board in consultation with the director
5 shall adopt rules necessary and appropriate to administer this
6 section.

8 7. Dedication of public compensation. All fees and other
9 consideration received by the bureau as compensation to the
10 public for any diminution of its public trust rights collected
11 under this section accrue to the Submerged Lands Fund established
12 in section 557-A.

14 8. Aquaculture exemption. A lease for the use of submerged
15 lands under this section is not required for the development and
16 operation of any aquaculture facility if the owner or operator of
17 the facility has obtained a lease from the Commissioner of Marine
18 Resources under section 6072. Ancillary equipment and facilities
19 permanently occupying submerged lands on the lease site and not
20 explicitly included in the lease granted by the Commissioner of
21 Marine Resources are not exempt from the requirements of this
22 section.

24 **§558-D. Submerged Lands Public Trust Review Board**

26 1. Creation of review board. The Submerged Lands Public
27 Trust Review Board, as established by Title 5, section 12004-D,
28 subsection 5, is created within the Department of Conservation
29 for the purposes of deciding appeals from submerged lands
30 lease-related decisions of the Director of the Bureau of Public
31 Lands and adopting in consultation with the director rules
32 related to submerged lands. The Submerged Lands Public Trust
33 Review Board, in this chapter called the "board," consists of 7
34 public members. Members must be experienced, knowledgeable and
35 actively involved in an enterprise directly facilitating public
36 trust uses and are appointed as follows: Two by the President of
37 the Senate; 2 by the Speaker of the House of Representatives; and
38 3 by the Governor.

40 Members of the board serve 3-year terms. Of the initial
41 appointees, 2 must be appointed for a one-year term, 2 must be
42 appointed for a 2-year term and 3 must be appointed for a 3-year
43 term. Thereafter, appointees are appointed to serve 3-year
44 terms. A member may not be a state employee. Members hold
45 office until the appointment of their successors. A vacancy
46 during an unexpired term must be filled as provided in this
47 section, but only for the unexpired portion of the term. The
48 board shall elect a chair from among its members annually.

50 The director shall attend all meetings of the board and is
51 permitted to participate fully but may not vote. The board may
52 request staff assistance from the director as needed.

2 2. Board meetings and rules. Meetings must be held at least
4 quarterly, or at the call of the chair or at the call of more
6 than 1/2 of the board. In accordance with Title 5, chapter 375,
8 subchapter II, the board in consultation with the director may
10 adopt rules necessary to carry out its responsibilities under
12 this section. The board shall keep minutes of all of its
14 proceedings, which must be a public record available and on file
 in the bureau. Members of the board are entitled to reimbursement
 for direct expenses of attendance at board meetings. A quorum of
 the board for the transaction of business is 4 members. No action
 may be taken by the board unless upon approval by a vote of 4
 members.

14 3. Appeal of decisions by the director. Any person
16 aggrieved by a decision of the director made under section 558-C,
18 subsection 3 may appeal that decision to the board within 30 days
20 of that decision. The board shall review the decision of the
22 director. The board shall give reasonable notice to interested
24 persons. The board may hold a hearing on the appeal and may
26 affirm, modify or reverse the decision of the director. The
28 board may allow the record to be supplemented when it finds that
 the evidence offered is relevant and material. The board is not
 bound by the director's findings, but any changes made by the
 board under this subsection must be based upon the board's review
 of the record and any supplemental evidence admitted by the
 board, including evidence in the record of any hearing held by
 the board.

30 Within 45 days of receiving the appeal, the board shall hold a
32 hearing or make findings of fact and issue a decision affirming,
34 modifying or reversing the decision of the director. If a
 hearing is held, a decision must be made within 45 days after
 adjournment of the hearing.

36 All hearings are subject to Title 5, chapter 375, subchapter IV.

38 Sec. 5. Effective date. This Act takes effect January 1, 1996,
40 except that the members of the Submerged Lands Public Trust
42 Review Board must be appointed, effective November 1, 1995.
44 After November 1, 1995, the board shall take action necessary to
 ensure the readiness of the board to comply with this Act on
 January 1, 1996.

STATEMENT OF FACT

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4 This bill repeals existing law related to the granting of
6 leases and easements for submerged and intertidal lands held in
8 trust by the State and establishes a new procedure for allowing
10 use and construction upon those lands. Entities, public and
12 private, that use submerged lands for fishing, navigation,
14 fowling or other traditional public trust uses are granted
16 exclusive use of the submerged lands without requirement of lease
18 or easement as long as those uses continue. Structures that
facilitate those traditional uses must be registered and are
subject to a \$100 registration fee. Structures that do not
facilitate those uses require a lease from the Bureau of Public
Lands and payment of a one-time administrative fee of \$100. This
bill also establishes a Submerged Lands Public Trust Review Board
with authority to adopt rules governing submerged lands and to
hear appeals of submerged lands leasing-related decisions made by
the Director of the Bureau of Public Lands.