

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 1639

S.P. 572

In Senate, March 3, 1999

**An Act to Amend the Laws Governing the Maine State Pilotage
Commission.**

(EMERGENCY)

Submitted by the Department of Transportation pursuant to Joint Rule 204.
Reference to the Committee on Transportation suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator O'GARA of Cumberland.
Cosponsored by Representative JABAR of Waterville and
Representatives: BOUFFARD of Lewiston, SAVAGE of Union.

2 **Emergency preamble.** Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4
6 **Whereas,** this bill is intended to reduce safety risks in
harbors resulting from unskilled navigation, protect shoreline
environment and wildlife from the risk of spills in harbors and
8 protect harbor economies and the fishing industry from safety
risks and environmental risks; and

10
12 **Whereas,** in light of the imminent safety, environmental and
economic risks, it is essential to authorize the Maine State
Pilotage Commission to implement the legislation and proceed with
14 rulemaking as soon as possible; and

16 **Whereas,** in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
18 Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
20 safety; now, therefore,

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

24 **Sec. 1. 5 MRSA §12004-A, sub-§40,** as enacted by PL 1987, c.
786, §5, is amended to read:

26 **40. Maine State** Not Autho- 38 MRSA §89
28 Pilotage Commission rized

30 **Sec. 2. 38 MRSA §85,** as amended by PL 1985, c. 389, §32, is
further amended to read:

32 **§85. Declaration of policy**

34 It is declared to be the policy and intent of the
36 Legislature and the purpose of this ~~section and sections 86 to~~
~~106 subchapter~~ to provide for a system of state pilotage in order
38 to provide maximum safety from the dangers of navigation for
vessels entering or leaving the waters described in this
40 subchapter, to maintain a state pilotage system devoted to the
preservation and protection of lives, property, the environment
42 and vessels entering or leaving these waters at the highest
standard of efficiency and to insure an adequate supply of pilots
44 well qualified for the discharge of their duties in aid of
commerce and navigation.

46 **Sec. 3. 38 MRSA §85-A,** as amended by PL 1997, c. 727, Pt. C,
48 §17, is repealed.

50 **Sec. 4. 38 MRSA §85-B** is enacted to read:

2 **§85-B. Definitions**

4 As used in this subchapter, unless the context otherwise
6 indicates, the following terms have the following meanings.

8 1. Coastal waters. "Coastal waters" means the
10 jurisdictional area of the commission, which waters are all
12 coastal navigable waters that are contained within, flow through,
14 or border upon the State or any portion thereof, including those
16 portions of the Atlantic Ocean within the jurisdiction of the
 State, up to state or international boundaries, and including all
 waters between Isle au Haut and Seal Island westward of a
 straight line between Western Ear Ledge on Isle au Haut drawn to
 Eastern Ledge on Seal Island.

18 2. Coastal zones. "Coastal zones" means the 3 areas of
20 Maine coastal waters relevant to the commission membership,
 Calais to Schoodic Point, Schoodic Point to Port Clyde, and Port
 Clyde to Kittery, excepting the port of Portland and Casco Bay.

22 3. Commission. "Commission" means the Maine Pilotage
24 Commission.

26 4. Commissioner. "Commissioner" means the Commissioner of
 Transportation.

28 5. Department. "Department" means the Department of
30 Transportation.

32 6. Pilotage areas. "Pilotage areas" means specific areas
34 of the Maine coast where the commission has established licensing
 requirements.

36 Sec. 5. 38 MRSA §86, as amended by PL 1991, c. 698, §2, is
 further amended to read:

38 **§86. Vessels required to take pilot**

40 Every foreign vessel and every American vessel under
42 register, with a draft of 9 feet or more, entering or departing
44 from any port or harbor within the waters described in section
46 86-A shall must take a pilot licensed under this chapter. Any
48 master, owner, agent or consignee that fails to take a pilot
 licensed under this subchapter is subject to a civil penalty not
 to exceed ~~\$5,000~~ \$15,000 per day, payable to the State. This
 penalty is recoverable in a civil action.

50 Sec. 6. 38 MRSA §86-A, sub-§2, as repealed and replaced by PL
 1987, c. 689, §1, is amended to read:

2 2. **Exempt waters.** Those waters specifically exempted by
the Maine State Pilotage Commission; or

4 **Sec. 7. 38 MRSA §87-A**, as enacted by PL 1985, c. 389, §35, is
6 amended to read:

8 **§87-A. Exceptions**

10 1. **Vessels exempt.** ~~Sections 85 to 106 shall~~ This
12 subchapter does not apply to:

14 A. Vessels under enrollment;

16 B. Fishing vessels;

18 C. Vessels powered predominantly by sail;

20 D. ~~The meter vessel Bluenose, or any vessel substituted for~~
22 ~~the Bluenose, operating on a published regular schedule~~
24 ~~sailing between Bar Harbor, Maine, and Yarmouth, Nova~~
26 ~~Scotia, provided that:~~ The vessel on regularly scheduled
ferry operations between Bar Harbor, Maine and Yarmouth,
Nova Scotia, provided that the master of such vessel has
completed an appropriate number of trips, as established by
commission rules and has met any appropriate federal
requirements.

28 ~~(1) The qualifications and experience of any licensed~~
30 ~~master of the Bluenose, or its substitute, meet those~~
32 ~~established by regulations of the United States Coast~~
~~Guard;~~

34 ~~(2) A federal pilot, or a pilot licensed under this~~
36 ~~subchapter, shall pilot the Bluenose, or its~~
38 ~~substitute, on the licensed master's initial arrival~~
40 ~~and departure during each calendar year, except that a~~
42 ~~relief licensed master may make his initial arrival and~~
~~departure trip for the calendar year, with another~~
~~licensed master who has made a familiarization trip~~
~~during the calendar year; and~~

44 ~~(3) The licensed master of any substitute vessel has~~
46 ~~piloted the Bluenose, or a substitute, in the waters of~~
~~Frenchman's Bay for not less than 12 trips between Bar~~
~~Harbor, Maine, and Yarmouth, Nova Scotia, within a~~
~~period of 2 years;~~

48 E. All military and ~~commercial~~ ships navigating the
50 Kennebec River to and from the Bath Iron Works Corporation

2 for the purpose of accomplishing overhaul, repair, post
shakedown availability and sea trials.

4 **2. Limitation.** If any such vessel employs a pilot, the
pilot shall-be is entitled to receive as compensation for his
6 that pilot's service pilotage fees in an the amount ~~not-to-exceed~~
~~the-rates~~ established by the commission.

8
10 **Sec. 8. 38 MRSA §88**, as amended by PL 1977, c. 696, §332, is
further amended to read:

12 **§88. Piloting without license**

14 It shall-be is unlawful for any person not licensed as a
pilot under ~~sections-85-to-105~~ this subchapter to pilot or offer
16 to pilot a vessel not exempt from ~~sections-85-to-105~~ this
subchapter. Any person found to be in violation of this
18 subchapter must be assessed a fine not to exceed \$5,000 for each
instance of piloting, or offering to pilot without a license.
20 Violation of this provision shall-be is a Class E crime.

22 **Sec. 9. 38 MRSA §89**, as amended by PL 1993, c. 600, Pt. A,
§281, is further amended to read;

24 **§89. Maine Pilotage Commission members**

26 The Maine State Pilotage Commission, as established by Title
28 5, section 12004-A, subsection 40, consists of 5 7 members
appointed by the Governor as follows: ~~Three-must-be-licensed~~
30 ~~pilots-representing-the-Penobscot-Bay-and-the-Penobscot-River,~~
~~Bar-Harbor-to-Eastport-and-Bath;-one-must-represent-the-marine~~
32 ~~industry-interests;-and-one,-with-a-marine-background,-must~~
~~represent-the-public.~~ Three pilots licensed and actively
34 piloting, one from each of the coastal zones; two persons from
the maritime industry that utilizes the services of pilots and 2
36 persons with a maritime background representing the public.
Appointments are for 3-year terms. Appointments of members must
38 comply with Title 32, section 60. The members of the commission
are entitled to compensation according to Title 5, chapter 379.

40 **Sec. 10. 38 MRSA §90, sub-§1, ¶¶A and B**, as enacted by PL 1969,
42 c. 410, §1, are amended to read:

44 A. Make, establish and enforce such rules and regulations
not inconsistent with law, ~~which shall-be~~ that are binding
46 ~~and-effectual~~ upon all pilots licensed by the commission,
and upon all parties employing such pilots;

2 B. Make and establish rates of pilotage for such those
vessels as that are subject to ~~sections--85--to--105~~ this
subchapter;

4
6 **Sec. 11. 38 MRSA §90, sub-§1, ¶D**, as amended by PL 1977, c.
694, §747, is further amended to read;

8 D. Issue any pilot's license in accordance with ~~sections--85~~
~~to--105~~ this subchapter and initiate proceedings ~~in--the~~
Administrative Court to suspend or revoke these licenses;

10
12 **Sec. 12. 38 MRSA §90, sub-§1, ¶¶F and I**, as enacted by PL 1969,
c. 410, §1, are amended to read:

14
16 F. Hear and decide complaints made in writing or initiated
on its own motion against any pilot for any misbehavior ~~or,~~
neglect of, or breach of rules or regulations, ~~which that it~~
shall ~~deem~~ determines material to be investigated;

18
20 I. To do all other things reasonable, necessary and
expedient to insure proper and safe pilotage and to
22 facilitate the efficient administration of ~~sections--85--to~~
105 this subchapter.

24
26 **Sec. 13. 38 MRSA §90-A, first ¶**, as amended by PL 1981, c. 456,
Pt. A, §121, is further amended to read:

28 On or before August 1st of each year, the commission shall
submit to the ~~Commissioner-of-Business-Regulation,~~ commissioner
30 for the preceding fiscal year ending June 30th its annual report
of its operations and financial position, together with such
32 those comments and recommendations as that the commission deems
considers essential.

34
36 **Sec. 14. 38 MRSA §91**, as amended by PL 1985, c. 389, §38, is
further amended to read:

38 **§91. Qualifications of licensees**

40 Every person who shall ~~apply~~ applies for a license to act as
a pilot in the waters covered in this subchapter shall must be a
42 citizen of the United States and the State of Maine. ~~He shall~~ If
applicable, the applicant must possess a federal first class
44 pilot's endorsement, issued by a duly constituted authority of
the United States, covering ~~the waters described in section 86-A~~
46 areas for which the applicant is making application. The
commission shall set standards for application, testing and
48 granting of a state license. In those areas where no federal
endorsement is available, the commission may set additional
50 standards for a state license. An applicant for a license shall

2 must satisfy the commission that he the applicant has or will
have proper means available to ~~him~~ for boarding and leaving
vessels which he the applicant may be called upon to pilot.

4
6 **Sec. 15. 38 MRSA §92**, as amended by PL 1991, c. 509, §47, is
further amended to read:

8 **§92. Duration and renewal of licenses**

10 Licenses issued by the ~~pilot~~ pilotage commission must be
renewed every year ~~on or before the expiration date established~~
12 ~~by the commissioner~~ 5 years to coincide, if possible, with the
renewal of the individual's federal license.

14
16 **Sec. 16. 38 MRSA §93**, as amended by PL 1991, c. 509, §48, is
further amended to read:

18 **§93. License fees**

20 Every new application for a license to act as a pilot on
22 ~~these coastal waters~~ must be accompanied by an application fee of
~~\$100~~ \$500 for the first pilotage area and \$50 for each successive
24 pilotage area. Original and ~~annual~~ renewal license fees are \$10
26 \$375 for 5 years, regardless of number of areas being renewed.
Licenses may be renewed up to 90 days after the date of
28 expiration upon payment of a late fee of ~~\$10~~ \$100 in addition to
the renewal fee. Any person who submits an application for
30 renewal more than 90 days after the licensing renewal date is
subject to all requirements governing new applicants under this
chapter.

32 A holder of a license on the effective date of this
34 paragraph is not required to renew that license until ~~its~~
expiration the next expiration and renewal of the federal license.

36 **Sec. 17. 38 MRSA §94**, as amended by PL 1991, c. 509, §49, is
repealed.

38
40 **Sec. 18. 38 MRSA §97**, as enacted by PL 1969, c. 410, §1, is
amended to read:

42 **§97. Authority of pilots**

44 A pilot licensed under ~~sections 85 to 105~~ this subchapter
46 may pilot any vessel required to take a state pilot anywhere upon
the pilotage ~~grounds~~ area for which he the pilot is licensed.

48 **Sec. 19. 38 MRSA §98**, as amended by PL 1977, c. 696, §333, is
further amended to read:

50

2
3
4
5
6
7
8
9
10
11
12
13
14

§98. Commissions prohibited

No A master, agent, owner, charterer or consignee shall ~~may~~ not charge a commission or receive any payment directly or indirectly, for the assignment of pilotage, nor shall ~~may~~ any pilot pay or offer to pay to any person any commission for the assignment of pilotage. Any person violating this section commits a civil violation for which a forfeiture not to exceed \$500 \$5,000 may be adjudged for each violation.

15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

Sec. 20. 38 MRSA §99, as amended by PL 1985, c. 389, §39, is further amended to read;

§99. Grounds for disciplinary action

The ~~Administrative-Court~~ commission may suspend any pilot for any period that it may deem consider proper, and may suspend, revoke or annul any pilot's license ~~which shall be that is~~ that is issued under ~~sections 85 to 106~~ this subchapter, upon satisfactory proof that such a pilot has willfully disobeyed or violated any of the provisions of ~~sections 85 to 106~~ this subchapter or any rule established by the commission; or such a pilot has negligently lost or damaged any vessel under ~~his~~ that pilot's care; or such a pilot is habitually intemperate in the use of alcohol or habitually uses narcotic or hypnotic or other substances so as to be unfit to be entrusted with the charge of a vessel; or the pilot is so mentally or physically incapable as to be unfit to carry on the duties of a pilot.

35
36
37
38
39
40
41
42
43
44
45
46
47
48

Sec. 21. 38 MRSA §100-A is enacted to read:

§100-A. Confidentiality of complaints and investigative records

1. During investigation. All complaints and investigative records of the commission are confidential during the pendency of an investigation. Those records become public records upon the conclusion of an investigation unless confidentiality is required by some other provision of law. For purposes of this section, an investigation is concluded when:

A. A notice of an adjudicatory hearing under Title 5, chapter 375, subchapter IV has been issued;

B. The complaint has been listed on a meeting agenda of the commission;

C. A consent agreement has been executed; or

2 D. A letter of dismissal has been issued or the
investigation has otherwise been closed.

4 2. Exceptions. Notwithstanding subsection 1, during the
pendency of an investigation, a complaint or investigative record
6 may be disclosed:

8 A. To department employees designated by the commissioner;

10 B. To designated complaint officers of the commission;

12 C. By a department employee or complaint officer designated
by the commissioner when and to the extent considered
14 necessary to facilitate the investigation;

16 D. To other state or federal agencies when the files
contain evidence of possible violations of laws enforced by
18 those agencies;

20 E. When and to the extent considered necessary by the
commissioner to avoid imminent and serious harm. The
22 authority of the commissioner to make such a disclosure may
not be delegated;

24 F. Pursuant to rules adopted by the department, when it is
determined that confidentiality is no longer warranted due
26 to general public knowledge of the circumstances surrounding
the complaint or investigation and when the investigation
28 would not be prejudiced by the disclosure; and

30 G. To the person investigated on that persons's request.
32 The commissioner may refuse to disclose part or all of any
investigative information, including the fact of an
34 investigation, when the commissioner determines that
disclosure would prejudice the investigation. The authority
36 of the commissioner to make such a determination may not be
delegated.

38 3. Violation. A person who knowingly or intentionally
40 makes a disclosure in violation of this section commits a civil
violation for which a forfeiture not to exceed \$1,000 may be
42 adjudged.

44 **Sec. 22. 38 MRSA §101, as repealed and replaced by PL 1977,**
46 **c. 696, §334, is amended to read:**

48 **§101. Surrender of suspended or revoked license**

50 A pilot whose license has been revoked or suspended shall
surrender his the license to the commission, which shall retain

2 it until the period of his the pilot's suspension shall-~~expire~~
3 expires. Any such suspended pilot who refuses to surrender his
4 the license on demand or continues to pilot commits a civil
5 violation for which a ~~forfeiture~~ penalty not to exceed \$500
6 \$5,000 may be adjudged for each week after demand that he the
7 pilot refuses to ~~so~~ surrender or for each vessel piloted without
8 a license, and the commission may cause to be published in a
9 newspaper of general circulation published in the State a notice
10 that that person has no authority to act as pilot unless and
11 until reinstated by law.

12 **Sec. 23. 38 MRSA §103**, as enacted by PL 1969, c. 410, §1, is
13 amended to read:

14 **§103. Lapsed**

15 Any pilot heretofore licensed by the ~~board~~ commission whose
16 license shall-~~lapse~~ lapses for any reason may be reinstated upon
17 compliance with sections 91 and 93, as if applying for an initial
18 license.

19 **Sec. 24. 38 MRSA §105**, as amended by PL 1979, c. 127, §206,
20 is repealed.

21 **Sec. 25. Initial terms of Maine Pilotage Commission members.**
22 Notwithstanding the Maine Revised Statutes, Title 38, section 89
23 the initial term for the commission member from the Coastal Zone
24 of Schoodic Point to Port Clyde is 2 years; the initial term for
25 the commission member from the Coastal Zone of Port Clyde to
26 Kittery is one year; the initial term of one member representing
27 the Maritime industry is 2 years; and the initial term of one
28 member representing the public is 2 years.

29 **Emergency clause.** In view of the emergency cited in the
30 preamble, this Act takes effect when approved.

31 **SUMMARY**

32 This bill accomplishes the following.

33 1. It changes the name of the "Maine State Pilotage
34 Commission" to the "Maine Pilotage Commission," increases the
35 number of members on the commission and changes the description
36 of the jurisdictional area that certain members represent.

37 2. It increases fees, penalties and fines for violating
38 provisions of law governing the piloting of vessels.

2 3. It requires the commission to submit its annual report
to the Commissioner of Transportation rather, than to the
Commissioner of Professional and Financial Regulation.

4

6 4. It specifies that all complaints and investigative
records of the commission are confidential during the pendency of
an investigation and sets forth exceptions to that
8 confidentiality.