

MAINE STATE LEGISLATURE

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L.D. 1857

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
121ST LEGISLATURE
SECOND SPECIAL SESSION

HOUSE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to H.P. 1383, L.D. 1857, Bill, "An Act To Implement the Recommendations of the Task Force on the Planning and Development of Marine Aquaculture in Maine"

Amend the amendment in Part A by striking out all of section 21 and inserting in its place the following:

'Sec. A-21. 12 MRSA §6673, as amended by PL 1999, c. 267, §3, is further amended to read:

§6673. Municipal shellfish aquaculture permit

A municipality, ~~which~~ that has established a shellfish conservation program as provided under section 6671, ~~may lease areas, consistent with the rights of property owners, issue a municipal shellfish aquaculture permit to a person for the exclusive use of shellfish in a designated area in the intertidal zone to the extreme low water mark, within the municipality for the purpose of shellfish aquaculture. Municipal authority to issue a municipal shellfish aquaculture permit under this section does not limit in any way the authority of the commissioner to issue leases in the intertidal zone in accordance with sections 6072, 6072-A and 6072-B.~~

~~1. Municipal procedure. A lease application written on a form supplied by the commissioner may be approved by the municipal officers if they find that it conforms to the shellfish program, that it will not cause the total area under lease to exceed 1/4 of all the municipal intertidal zone that is open to the taking of shellfish and that granting it is in the best~~

HOUSE AMENDMENT

~~interests of the municipality. On approval, the lease must be
forwarded to the commissioner.~~

1-A. Application. A municipality shall review an application for a municipal shellfish aquaculture permit on a form supplied by the municipality. The municipality shall publish a summary of the application in a newspaper of general circulation in the area that would be affected by the permit. A person may provide comments to the municipality on the proposed permit within 30 days of publication of the summary.

Prior to issuing a municipal shellfish aquaculture permit, a municipality shall hold a public hearing if requested in writing by 5 or more persons. The public hearing must be held in accordance with procedures established in ordinances adopted in subsection 3.

~~2. Department procedure for review and approval. The commissioner shall use the same procedure and the same grounds for approval as required for aquaculture leases under section 6072, except:~~

~~A. Preference shall be given to municipal leases;~~

~~B. No rent shall be set, but there shall be an annual municipal lease fee of not less than \$1 per acre;~~

~~C. The municipality may establish the conditions and limits on the lease, and~~

~~D. The advice and consent of the advisory council shall not be required.~~

2-A. Decision. In evaluating a proposed municipal shellfish aquaculture permit, a municipal officer shall take into consideration the number and density of permits and leases in the area and may issue the permit if the municipal officer finds the proposed project meets the following criteria.

A. The permit conforms to the municipality's shellfish conservation program.

B. The permit will not cause the total area under the permit to exceed 1/4 of the entire municipal intertidal zone that is open to the taking of shellfish.

C. Issuing the permit is in the best interests of the municipality.

2 D. The permit will not unreasonably interfere with ingress
and egress of riparian owners.

4 E. The permit will not unreasonably interfere with
navigation.

6 F. The permit will not unreasonably interfere with fishing
8 or other uses of the area. For purposes of this paragraph,
10 "fishing" includes public access to a redeemable shellfish
12 resource, as defined by the department, for the purpose of
14 harvesting, provided that the resource is commercially
16 significant and is subject to a pollution abatement plan
that predates the permit application, that includes
verifiable activities in the process of implementation and
that is reasonably expected to result in the opening of the
area to the taking of shellfish within 3 years.

18 G. The permit will not unreasonably interfere with
20 significant wildlife habitat and marine habitat or with the
22 ability of the site affected by the permit and surrounding
marine and upland areas to support existing ecologically
significant flora and fauna.

24 H. The applicant has demonstrated that there is an
26 available source of organisms to be cultured for the site
affected by the permit.

28 I. The permit does not unreasonably interfere with public
30 use or enjoyment within 1,000 feet of a beach, park or
32 docking facility owned by the Federal Government, the State
34 Government or a municipal government or conserved lands.
36 For purposes of this paragraph, "conserved lands" means land
in which fee ownership has been acquired by the municipal
government, State Government or Federal Government in order
to protect the important ecological, recreational, scenic,
cultural or historic attributes of that property.

38 A municipality shall review the Executive Department, State
40 Planning Office's list of conserved lands compiled pursuant to
42 section 6072, subsection 7-A, paragraph F prior to issuing a
municipal shellfish aquaculture permit.

44 A municipality shall put its findings on each of the criteria
46 listed in this subsection in writing and make those findings
available to the public.

48 3. Municipal shellfish aquaculture permit. Prior to
50 issuing a municipal shellfish aquaculture permit pursuant to this
section, a municipality shall adopt ordinances that establish
procedures for consideration of permit applications under the

decision criteria in subsection 2-A, including but not limited to provisions for a public hearing process. An ordinance proposed by a municipality under this subsection must be approved in writing by the commissioner prior to its adoption.

When approved, a municipal shellfish aquaculture permit must be forwarded to the commissioner. The municipality may charge a municipal shellfish aquaculture permit fee not to exceed \$50 per acre. The municipality may establish conditions and limits on the permit. A municipal shellfish aquaculture permit may be granted for a period of up to 10 years and is renewable upon application by the permittee. The municipality shall monitor and enforce the terms and conditions of a permit.

4. Renewals. A municipality shall give public notice for a municipal shellfish aquaculture permit renewal as required under subsection 1-A, and a hearing must be held if it is requested in writing by 5 or more persons. If a public hearing is required, it must be held in accordance with procedures established in an ordinance adopted under subsection 3. A renewal may be granted as long as the permit continues to meet the criteria of subsection 2-A. The findings of the municipality regarding the criteria in subsection 2-A must be in writing and made available to the public.

Sec. A-22. 12 MRSA §6674, as enacted by PL 1977, c. 661, §5, is amended to read:

§6674. Interference with municipal shellfish aquaculture permit

~~It shall be unlawful to interfere with the rights provided in a municipal lease or to~~ A person may not knowingly interfere with the ability of a person who holds a municipal shellfish aquaculture permit from carrying out the privileges granted to the permittee under that permit. Except for the permittee, a person may not take shellfish by any means or disturb or molest any shellfish or area in the intertidal zone in an area that is included in a municipal lease shellfish aquaculture permit. A person who violates this section commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged.'

Further amend the amendment by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.



HOUSE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to H.P. 1383,
L.D. 1857

SUMMARY

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This amendment clarifies that a municipality may issue a
municipal shellfish aquaculture permit and not a lease for the
exclusive use of shellfish aquaculture in a designated area in
the intertidal zone within the municipality. Current law uses
the term "lease," which does not accurately reflect the interest
conveyed by a municipality to a person granted the authority to
exclusively pursue shellfish aquaculture activities in a
designated area within the intertidal zone. This amendment also
makes it a civil violation for a person to knowingly interfere
with the ability of a person who holds a municipal shellfish
aquaculture permit to conduct activities allowed under that
permit.

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SPONSORED BY: James P. Bull
(Representative BULL)

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TOWN: Freeport

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