

# MAINE STATE LEGISLATURE

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# 124th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2009

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Legislative Document

No. 1322

H.P. 926

House of Representatives, March 31, 2009

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### An Act To Amend Provisions of the Submerged Lands Law

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Submitted by the Department of Conservation pursuant to Joint Rule 204.  
Reference to the Committee on Agriculture, Conservation and Forestry suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative FLOOD of Winthrop.  
Cosponsored by Senator DAMON of Hancock and  
Representatives: BERRY of Bowdoinham, CAIN of Orono, PIEH of Bremen, PIOTTI of  
Unity, WEBSTER of Freeport, Senators: BARTLETT of Cumberland, NUTTING of  
Androscoggin, RECTOR of Knox.

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

2 **Sec. 1. 12 MRSA §1862, sub-§1, ¶C**, as enacted by PL 1997, c. 678, §13, is  
3 amended to read:

4 C. "Fair market rental value," for all uses of submerged lands except slip space  
5 rented or otherwise made available for private use for a fee, means the municipally  
6 assessed value per square foot for the adjacent upland multiplied by a reduction factor  
7 plus a base rate based on the use of the leased submerged land as specified in this  
8 section. This value is then multiplied by the square foot area of the proposed lease  
9 area to determine the annual rental rate. For slip space rented or otherwise made  
10 available for private use for a fee, the fair market rental value is the gross income  
11 from that space multiplied by a reduction factor as specified in this section based on  
12 the use of the leased submerged land.

13 **Sec. 2. 12 MRSA §1862, sub-§1, ¶D-1**, as enacted by PL 2005, c. 134, §2, is  
14 repealed.

15 **Sec. 3. 12 MRSA §1862, sub-§1, ¶E-1** is enacted to read:

16 E-1. "Offshore project" means a project that extends beyond localized development  
17 adjacent to a single facility or property. "Offshore project" does not include a shore-  
18 based pier, marina or boatyard or utility cable and pipelines serving neighboring  
19 communities or islands. "Offshore project" includes, but is not limited to, wind  
20 farms, tidal energy facilities, tanker ports, ship berthing platforms requiring  
21 secondary transport to shore, an interstate or international pipeline or cable and  
22 similar projects.

23 **Sec. 4. 12 MRSA §1862, sub-§2, ¶A**, as enacted by PL 1997, c. 678, §13, is  
24 amended to read:

25 A. For fill, permanent causeways, bridges, marinas, wharves, docks, pilings,  
26 moorings or other permanent structures and for nonpermanent structures occupying a  
27 total of 500 square feet or more of submerged land or occupying a total of 2,000  
28 square feet or more of submerged land if used exclusively for commercial fishing  
29 activities:

30 (1) The director shall charge the lessee a base rent that practically approximates  
31 the fair market rental value of the submerged land. The reduction factors and  
32 base rate for use categories are as follows:

33 (a) A reduction factor of 0%; with no base rate or no rental fee; for nonprofit  
34 organizations or publicly owned facilities that offer free public use or public  
35 use with nominal user fees. Public uses include, but are not limited to,  
36 municipal utilities and facilities that provide public access to the water, town  
37 wharves, walkways, fishing piers, boat launches, parks, nature reserves,  
38 swimming or skating areas and other projects designed to allow or enhance  
39 public recreation, fishing, fowling and navigation and for which user fees are  
40 used exclusively for the maintenance of the facility;

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(b) A reduction factor of ~~4%~~ 0.1% plus a base rate of \$0.025 per square foot for commercial fishing uses of renewable aquatic resources. Commercial uses of renewable aquatic resources include, but are not limited to, facilities that are directly involved in commercial fishing activities. Such facilities include, but are not limited to, fish piers, lobster impoundments, fish processing facilities and floats or piers for the storage of gear;

(c) A reduction factor of 2% for any slip space rented or otherwise made available for private use by commercial fishing boats for a fee;

(d) A reduction factor of ~~2%~~ 0.2% plus a base rate of \$0.05 per square foot for water-dependent commerce, industry and private uses. Water-dependent commerce, industry and private uses other than commercial uses of renewable aquatic resources include, but are not limited to, all facilities that are functionally dependent upon a waterfront location, can not reasonably be located or operated on an upland site or are essential to the operation of the marine industry. Such facilities include, but are not limited to, privately owned piers and docks, cargo ports, private boat ramps, shipping and ferry terminals, tug and barge facilities, businesses that are engaged in watercraft construction, maintenance or repair, aquariums and the area within marinas occupied by service facilities, gas docks, breakwaters and other structures not used for slip space;

(e) A reduction factor of 4% for any slip space rented or otherwise made available for private use for recreational boats for a fee. ~~For facilities that include slip space under constructive easement, the rental fee may be reduced proportionally by the ratio of linear length of slip space within the area under constructive easement to the total linear length of all slip space within the facility; and~~

(f) A reduction factor of ~~2%~~ 0.2% for upland uses and fill located on submerged lands prior to July 1, 2009 and 0.4% for new upland uses and fill after July 1, 2009 plus a base rate of \$0.05 per square foot. Upland uses include, but are not limited to, all uses that can operate in a location other than on the waterfront or that are not essential to the operation of the marine industry. These facilities include, but are not limited to, residences, offices, restaurants and parking lots. Fill must include the placement of solid material other than pilings or other open support structures upon submerged lands.

~~When~~ If the director determines that the municipally assessed value of the adjacent upland is not an accurate indicator of the value of submerged land, the director may make adjustments in the municipally assessed value so that it more closely reflects the value of comparable waterfront properties in the vicinity or require the applicant to provide an appraisal of the submerged land. The appraisal must be approved by the director;

For offshore projects where municipally assessed value for the adjacent upland or submerged lands appraisals are unavailable or the director determines that such assessment or appraisals do not accurately indicate the value of the submerged land, the director may establish the submerged lands annual rental rate and other

1           public compensation as appropriate by negotiation between the bureau and the  
2           applicant. In such cases the annual rent and other public compensation must take  
3           into account the proposed use of the submerged lands, the extent to which  
4           traditional and customary public uses may be diminished, the public benefit of  
5           the project, the economic value of the project and the avoided cost to the  
6           applicant. If the State's ability to determine the values listed in this paragraph or  
7           to carry out negotiations requires expertise beyond the program's capability, the  
8           applicant must pay for the costs of contracting for such expertise;

9           (2) After October 1, 1990, the director may revalue all existing rents to full fair  
10          market rental value. Rents for all uses except slip space may be adjusted  
11          annually as needed over a period not to exceed 5 years until the full fair market  
12          rental value is reached. ~~Thereafter~~ After the full fair market rental value is  
13          reached, the director may revalue rents for all uses except slip space every 5  
14          years based on changes in municipally assessed value and programmatic cost  
15          adjustments to the base rate. Adjustments to the base rate may not exceed 4%  
16          per year. Rents for slip space may fluctuate annually depending on the gross  
17          income of the facility;

18          (3) The director may also lease a buffer zone of not more than 30 feet in width  
19          around a permanent structure located on submerged or intertidal land, provided  
20          that the lease is necessary to preserve the integrity and safety of the structure and  
21          that the Commissioner of Marine Resources consents to that lease;

22          (4) Any existing or proposed lease may be subleased for the period of the  
23          original lease for the purpose of providing berthing space for any boat or vessel;

24          (5) No portion of an existing or proposed lease may be transferred from a person  
25          subleasing that portion to provide berthing space for any boat or vessel except for  
26          a transfer to heirs upon death of the sublessee holder or a transfer to the original  
27          leaseholder subject to terms agreed to by the lessor and sublessee at the time of  
28          the sublease. This subparagraph does not apply to any subleasing arrangements  
29          entered into before June 15, 1989; and

30          (6) The director may grant the proposed lease if the director finds that, in  
31          addition to any other findings that the director may require, the proposed lease:

32                 (a) Will not unreasonably interfere with navigation;

33                 (b) Will not unreasonably interfere with fishing or other existing marine uses  
34                 of the area;

35                 (c) Will not unreasonably diminish the availability of services and facilities  
36                 necessary for commercial marine activities; and

37                 (d) Will not unreasonably interfere with ingress and egress of riparian  
38                 owners.

39          The bureau shall adopt rules pertaining to this subparagraph by March 15, 1990.

40          **Sec. 5. 12 MRSA §1862, sub-§2, ¶D,** as enacted by PL 1997, c. 678, §13, is  
41          amended to read:

1 D. The director ~~may establish a reasonable~~ minimum rent to which any lease is  
2 subject, ~~not to exceed \$100~~ is \$150 per year.

3 **Sec. 6. 12 MRSA §1862, sub-§9**, as enacted by PL 1997, c. 678, §13, is amended  
4 to read:

5 **9. Public compensation.** ~~When~~ With respect to any lease, including, but not limited  
6 to, leases for offshore projects, when the director determines that the public should be  
7 compensated for the loss or diminution of traditional and customary public uses resulting  
8 from the activities proposed by the lessee, the director may negotiate with the lessee to  
9 provide public access improvements such as walkways, boat launching ramps, parking  
10 space or other facilities or negotiate a fee in lieu of such improvements as a condition of  
11 the lease. The determination of loss or diminution of traditional and customary public  
12 uses and appropriate public compensation must be made in consultation with local  
13 municipal officials.

14 **Sec. 7. Application.** This Act applies to new and renewal leases issued under the  
15 Maine Revised Statutes, Title 12, chapter 220, subchapter 5 after June 30, 2009 and all  
16 leases after December 31, 2009.

17 **SUMMARY**

18 This bill amends the definition of "fair market rental value," adjusts rental rates for  
19 submerged lands leases to be more fair and equitable by raising the minimum lease rent  
20 from \$100 to \$150 annually and provides for gradual adjustments to rental rates based on  
21 changes in assessed property values and programmatic cost increases over time. The bill  
22 provides for the phase-in of rental increases for leaseholders starting in 2010 whose  
23 adjusted rent will increase above \$1,200 following the repeal of the \$1,200 maximum  
24 rental cap on June 30, 2009. The bill also replaces the definition of "large-scale project"  
25 with a new definition for "offshore project" and authorizes the Director of the Bureau of  
26 Parks and Lands within the Department of Conservation to negotiate rental terms for the  
27 leasing of those facilities.

28 Public Law 2007, chapter 540 required the Department of Conservation, Bureau of  
29 Parks and Lands to review its submerged lands fee schedule in cooperation with a  
30 working group of interested parties. This bill results from that review.