

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE
AS PASSED BY THE

ONE HUNDRED AND TENTH LEGISLATURE

SECOND SPECIAL SESSION

September 25, 1981

AND

THIRD SPECIAL SESSION

December 9, 1981

AND

SECOND REGULAR SESSION

January 6, 1982 to April 13, 1982

AND AT THE

FOURTH SPECIAL SESSION

April 28, 1982 to April 29, 1982

AND AT THE

FIFTH SPECIAL SESSION

May 13, 1982

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ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 164, SUBSECTION 6.

J.S. McCarthy Co.
Augusta, Maine
1981

**PRIVATE AND
SPECIAL LAWS**

OF THE

STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION

and

FIFTH SPECIAL SESSION

of the

ONE HUNDRED AND TENTH LEGISLATURE

1981

ing in said Augusta, a home for needy women, of the value of \$300,000, and to manage and control the same for the purpose aforesaid; and said corporation shall have all the powers and privileges and be subject to all the duties and liabilities of similar corporations in this State.

Effective July 13, 1982.

CHAPTER 97

H.P. 2193 - L.D. 2073

AN ACT to Amend the Charter of Coburn Classical Institute.

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

P&SL 1901, c. 333, §1 is amended to read:

Sec. 1. Nathaniel Butler, Franklin W. Johnson, George D. B. Pepper, Horace Purinton, Leslie C. Cornish, Edwin C. Whittemore, Horatio R. Dunham and Cyrus W. Davis are hereby created a corporation by the name of Trustees of Coburn Classical Institute, for the purpose of maintaining a literary institution in the city of Waterville with all the powers of similar corporations, including the power to make and establish ~~by-laws~~ bylaws and regulations for the management of its affairs and the proper government of the institution.

Effective July 13, 1982.

CHAPTER 98

H.P. 2198 - L.D. 2077

AN ACT Relating to the Board of Harbor Commissioners and its Powers for the Harbor of Portland.

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

Sec. 1. Definitions. As used in this Act, the following terms have the following meanings.

1. **Branch.** "Branch" means a license or certificate of competency issued by the commission.

2. **Commission.** "Commission" means the Board of Harbor Commissioners for Portland Harbor created under this Act.

3. **Harbor.** "Harbor" means Portland Harbor.

4. **Harbor lines.** "Harbor lines" means the line marking the boundary of the harbor beyond which wharves and other structures may not be extended.

5. **Pilot.** "Pilot" means any person taken on board a vessel for the purpose of navigating the vessel through the entrance, approaches or any channel within the harbor, other than navigation incidental to the activity of directing the mooring, anchoring, docking or undocking of vessels.

6. **Portland Harbor.** "Portland Harbor" means the entire harbor and tidal waters within the limits of Portland Harbor, including the tidal waters of Fore River, Back Cove and northeasterly along the shores of the easterly side of the mouth of the Presumpscot River to the Grand Trunk Railroad Company's bridge and about the islands within the City of Portland; and also southerly and easterly of the lines of the harbor, as far as the jurisdiction of the Cities of Portland and South Portland extend, including all channels and entrances into the harbor, as far as the same are not under the exclusive control of the United States, and also including all coves, inlets and other parts where the tide ebbs and flows, within the limits of those cities.

7. **Vessel.** "Vessel" means any watercraft used or capable of being used for transportation.

Sec. 2. Commission established. There is established a Board of Harbor Commissioners for Portland Harbor, which shall be public body corporate and politic and is charged with responsibility for the regulation of navigation and commerce within Portland Harbor in accordance with the provisions of this Act. The commission shall consist of 5 members and shall have a quorum of 3 members. Two members

of the commission shall be appointed by the City of Portland, and these members shall be and continue to be residents of the City of Portland during tenure. Two members of the commission shall be appointed by the City of South Portland, and these members shall be and continue to be residents of the City of South Portland. One member of the commission, who shall be appointed by the Governor, with the concurrence of both the City Councils of Portland and South Portland. The initial term for the member appointed by the Governor shall be for 1 year. The City Councils of Portland and of South Portland shall, immediately after this Act takes effect, or as soon thereafter as deemed advisable, meet separately and appoint the 2 members from each city who shall constitute the members of the commission. Each council shall designate one member to serve for a 3-year term and one member to serve a 2-year term. All appointments thereafter shall be for terms of 3 years, except in the case of a vacancy, which shall be for the remainder of the unexpired term. Each member shall continue to serve after expiration of his term until his successor is appointed and qualified provided such service shall not continue in excess of 60 days after expiration of his term. The 5 members appointed shall annually elect from their own membership a chairman and a clerk, and may from time to time adopt such procedural rules as are necessary for the proper conduct of the business of the commission. A member may be removed for cause, or upon a determination that such member is not a resident of that city, in the case of those members appointed by the city councils. Removal shall be by the appointing council or, in the case of the 5th member, by the Governor with concurrence of both of the 2 councils.

The present members of the Board of Harbor Commissioners for Portland Harbor shall continue in office until such time as a quorum of commissioners is appointed under this Act, at which time their offices shall be abolished and the term of each member shall be deemed to have terminated. The powers of the Board of Harbor Commissioners and any rules made by the commission in effect on the effective date of this Act shall be deemed to continue in full force and effect and be supplementary to this Act for a period of one year thereafter, unless sooner displaced by a rule of the commission adopted under this Act. The commission established under this Act shall succeed to all assets and assume all liabilities of the former Board of Harbor Commissioners.

Sec. 3. Location of office; retention of documents. The commission shall have an office in the City of Portland or South Portland in which shall be kept all maps, charts, plans and documents relating to the lands and waters over which it has control. The present Board of Harbor Commissioners shall deliver to the commission created under

this Act such maps, charts, plans and documents now in the custody of the commission relating to those waters and lands. The commission shall adopt measures to preserve and protect such maps, charts, plans and documents, which shall be public records except as provided by law, under such rules as the commission may adopt. The commission shall make, or cause to be made, such further maps and plans for the use of the harbor and the approaches thereto as it deems proper. To accomplish that end, members of the commission shall keep themselves informed of the present and probable future requirements of shipping and other marine uses and as to the best means which can be provided at that port for the accommodation thereof. The commission may also investigate and determine, so far as practicable, what improvements may be made to the harbor to make it safer and more advantageous for navigation and commerce. The commission may employ such persons as it may from time to time deem necessary to assist it in performing its duties, including, but not limited to, the retention of legal counsel to advise the commission and to aid in the enforcement of this Act.

Sec. 4. Harbor lines. The commission may from time to time establish harbor lines over the whole, or any part, of the waters and territory within its jurisdiction; and thereafter from time to time alter and modify the lines as in the judgment of the commission changes in navigation may require.

Sec. 5. Permits required.

1. Creation or maintenance of any obstruction. The creation and maintenance of any obstruction in any of the navigable waters of the harbor, or in any part of the harbor under the jurisdiction of the commission, except by the United States, without first obtaining a written permit from the commission, is prohibited. It is unlawful to enlarge or extend any wharf heretofore built, build any wharf, pier, dolphin, bulkhead or other structure, dump any stones or any other material into any of the waters, or upon any part of the flats, excavate any part of the harbor, fill in any part of the harbor or modify the course, location or condition of the water of the harbor without a permit from the commission for such purpose. The commission shall not issue any such permit when it determines that the activity will substantially or unreasonably interfere with navigation or injure the rights of others.

2. Operation as pilot. The commission shall appoint such number of pilots for the harbor of Portland as it deems necessary for the safety and convenience of commerce, fix and establish such compensation for the services of the pilots as may, from time to time, be deemed just and reason-

able. Every foreign vessel and every American vessel under registry with a draft of 9 feet or more shall take a pilot licensed under this chapter upon entering, departing or navigating upon the waters of Casco Bay and the approaches thereto. In case of refusal to take such a pilot, any such vessel shall pay the established pilot fee as if a pilot has been employed. A pilot boat shall not be obliged to remain on her station at all times. A pilot shall have a lien for his pilotage fees on all vessels liable therefor.

This section shall not apply to vessels under enrollment, fishing vessels or vessels powered by sail. This section shall not apply to vessels primarily engaged in the carriage of passengers for hire which operate on a published annual schedule and which are not in excess of 500 feet overall length and have a draft not in excess of 20 feet, so long as the master of any such vessel has navigated that specific vessel on the above described waters with the assistance of a pilot for a minimum of 15 round trips of ingress and egress to the above described waters. Provided, that a pilot shall pilot such vessel as described in this paragraph upon the above described waters at least one round trip during each calendar month that the vessel operates upon the above described waters and at such other times as may be required by the Department of Transportation to ensure port safety after hearing and notice.

It shall be unlawful for any person not licensed as a pilot under this section to pilot, or offer to pilot, a vessel not exempt under the preceding paragraph. Violations of this provision shall be a misdemeanor punishable by a fine of \$500, or by imprisonment not to exceed 12 months, or by both, for each violation.

Persons desiring a branch shall make written application to the commission stating their qualifications therefor. The applicant shall be a citizen of the United States of America and a resident and citizen of the State. The commission shall make careful examination and investigation of the qualifications of the applicant and if satisfied that he has the requisite qualifications, may give the applicant a branch under the hands of its members and the seal of the commission, authorizing such person to act as pilot. The commission shall prescribe the form of a written application, the method of investigation or examination, or both, of the qualifications of each applicant and the standards for the branch. Branches shall be granted initially and renewed for terms of 5 years from the date of issuance or renewal unless sooner terminated. Such branches may be granted subject to such reasonable conditions as the commission deems necessary for navigational safety and for the convenience of the public and commerce. The commission may

fix and establish by rule the compensation for the services of the pilots as may, from time to time, be deemed just and reasonable. A person licensed as a pilot shall not charge more than the maximum fee established by the commission where use of a pilot is required by this Act. Any branch issued to a pilot may be revoked at any time by the commission for negligence, incapacity or other sufficient cause. A branch may not be transferred or assigned. The branch, so granted, shall be recorded by the clerk of the commission in a book kept for that purpose, entitled "Pilots for Port of Portland;" and the clerk shall receive from the applicant, a reasonable fee for the branch to be established by the commission.

3. Special permits. The commission shall grant special permits to dredges, floating plants and for other activities requiring the temporary use of any part of the channels where the commission is satisfied that the work is necessary, and may impose reasonable conditions upon the activities. The commission upon complaint of any person may fix and determine the time when, and the circumstances under which, vessels may lie at the ends of and alongside the wharves in order to maintain open channels; in the interest of navigational safety; and to protect the rights of riparian owners and the persons using the harbor. The commission may provide upon what notice vessels may be removed from the channels where such removal is necessary.

Sec. 6. Rulemaking. The commission shall from time to time adopt such rules as it deems necessary and proper, not inconsistent with law, for keeping open convenient channels for the passage of vessels, promoting navigational safety in the waters under its control and protecting persons having riparian rights, including, without limitation, procedures, standards and fees, and subject to the provisions of section 5, subsection 1 of this Act for the issuance of permits to build or extend wharves and other structures or to fill or excavate; to limit the speed of vessels within the harbor; to permit moorings; and to cause the removal of derelict and abandoned vessels. The commission may impose reasonable penalties by rule for violation of the rules, which penalties shall not be in excess of \$500 a day for each violation. The commission shall not promulgate any rule other than as an emergency without first presenting such rule to the Department of Transportation, Bureau of Transportation Planning and Services for review and comment. Thereafter the commission shall hold a public hearing, preceded by publication, as to the subject matter of the rule and the time and place of the public hearing, at least 7 days prior to the hearing. The rules shall be effective 45 days from the date on which notice of such rulemaking is sent to the City Managers of Portland and South Portland,

addressed to the City Councils of the cities, unless either City Council takes official action disapproving the rule or rules, in whole or in part, prior to the expiration of the 45-day period. All rules of the commission shall remain in effect until repealed or amended, as provided in this section, or when limited by the terms thereof. When the commission determines that an emergency involving the public health, safety or welfare requires that a rule take effect immediately, it may promulgate such rule with immediate effect upon notice to the City Councils and such findings shall be conclusive, provided that the reasons constituting the emergency are set forth therein. Such emergency rules shall be effective for not more than 14 days, unless extended after a public hearing after 7 days' prior published notice. In no case shall such rule be extended for a period in excess of 60 days from the date originally promulgated and the rule shall expire immediately upon disapproval by either City Council.

Sec. 7. Harbor master and deputy.

1. **Harbor master and deputy; appointment.** The rules of the commission shall be enforced and carried out by a harbor master and one or more deputy harbor masters appointed by the commission. It shall be the duty of the harbor master or his deputies to collect in the name of the commission all penalties incurred for the violation of such rules and the money so received shall be applied by the commission to carry out the purpose of this Act. The appointment of the harbor master and of any deputy harbor master shall be by the commission pursuant to rules of the commission adopted pursuant to section 6. The persons so appointed shall receive compensation fixed by rules of the commission as provided in section 6. Each deputy shall have all the powers and authority of the harbor master. The harbor master and deputies shall hold office for a term of one year from the date of approval of the appointment, but either may be removed by the commission at any time during such term, for cause, after notice and an opportunity to be heard. The commission shall fill any vacancy only for the remainder of the term, provided that such appointment shall be approved by the City Councils.

2. **Duties.** The harbor master or his deputies shall cause any vessel or vessels anchoring or mooring within the channel lines established by the commission or anchoring in such a manner that any portion of the hull, spars or booms extend beyond the lines, due to tide or wind, or which the harbor master finds in any way obstructing the free movement or anchorage or mooring of vessels in any part of the harbor, to move to such anchorage or mooring area as he designates for that purpose, and enjoy all the authority con-

ferred upon harbor masters under the provisions of the general law, except the power to arrest. Any vessel which obstructs commerce or navigation, or which violates the provisions of this Act or any rule made pursuant to this Act, is declared to be a nuisance. If such vessel is without a crew on board, or if the master, owner or person in charge neglects or refuses to move that vessel upon the order of the harbor master or his deputies, the harbor master or his deputies may put a crew on board, or may employ a tug or other tow boat, and move, anchor or otherwise secure that vessel at the cost and risk of the owner or owners of the vessel, and the expense occasioned thereby shall constitute a lien on that vessel, which the harbor master or his deputies may enforce in the name of the commission in any manner authorized by law. Any person aggrieved by any enforcement action taken pursuant to this Act without prior court approval may appeal to the commission to set aside such order, and the commission shall hear and decide the appeal within 7 days. The claims secured by such liens shall include any costs of collection and enforcing the liens, including reasonable attorneys' fees. Any person aggrieved by such action of the harbor master or his deputies may file a complaint for review of governmental action, accompanied by a bond for sufficient sureties in an amount equal to the full amount of the lien, whether or not that person has appealed to the commission as provided in this subsection. Upon approval of such bond, such vessel shall be released from the lien, the validity of which and the liability of the surety or sureties shall be determined in such action.

Sec. 8. Judicial review and violations. Decisions and actions of the commission, the harbor master or any deputy shall be reviewed pursuant to the Maine Rules of Civil Procedure, Rule 80B, and shall not be subject to the Maine Administrative Procedure Act, the Revised Statutes, Title 5, chapter 375. The Superior Court may award the penalties provided for violations of this Act or rules made hereunder as part of the adjudication of any action before the court to review or enforce decisions or actions of the commission, the harbor master or any deputy and shall restrain and enjoin violations of this Act and rules lawfully made pursuant thereto. If the court determines that any person, firm or corporation has violated any provision of this Act or any rule issued thereunder, the court shall award the commission all of its costs and expenses incurred in such proceeding, including reasonable attorneys' fees. In addition to such jurisdiction, the District Court shall have jurisdiction to award the penalties for violations of this Act and of rules made pursuant thereto as civil violations. All such penalties shall be for the use of the commission. It is a violation of this Act for any person to obstruct,

hinder or delay the harbor master or the deputy in the discharge of the duties of his office, or to obstruct, hinder or delay any person assisting them under the provisions of this Act. Any person so acting is guilty of a Class E crime, unless the Maine Criminal Code provides a greater punishment classification for the same act, in which case the Maine Criminal Code provisions shall apply.

Sec. 9. Annual reports. The commission shall annually deliver to the City Manager of each city, and the Department of Transportation, Bureau of Transportation, Planning and Services a copy of a report addressed to the City Councils of the cities, which report shall include statements as to its activities hereunder; any recommendations with respect to legislation by the cities, State or Federal Government which may be necessary or expedient to improve the harbor and access thereto or to enable the commission to more efficiently regulate its affairs; a detailed budget for the next fiscal year; and a statement as to any appropriations if any are deemed necessary by the commission to finance its activities for the next fiscal year.

Sec. 10. Appropriations by cities. Each city may appropriate or lend such money or contribute such services for the use of the commission as it deems reasonable and proper to further the purposes of this Act. The commission's fiscal year shall run from July 1st to June 30th.

Sec. 11. Compensation. Members of the commission shall serve without compensation, except that each commissioner shall be entitled to reimbursement for necessary and reasonable expenses incurred in the performance of his duties under this Act.

Sec. 12. Wharves and fish weirs. The provisions of the Revised Statutes, Title 38, chapter 9, do not apply to any wharf or fish weir built or extended within Portland Harbor under a permit of the commission issued pursuant to section 5.

Sec. 13. Inconsistent acts repealed. Except as provided in this Act, Private and Special Law 1917, chapter 192; Private and Special Law 1927, chapter 24; Private and Special Law 1955, chapter 134; Private and Special Law 1957, chapter 65; and Private and Special Law 1963, chapter 96, as amended, are repealed. No other acts or resolves of the Legislature shall be affected hereby except as expressly provided.