

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND THIRTEENTH LEGISLATURE

FIRST SPECIAL SESSION

October 9, 1987 to October 10, 1987

SECOND SPECIAL SESSION

October 21, 1987 to November 20, 1987

and the

SECOND REGULAR SESSION

January 6, 1988 to May 5, 1988

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Twin City Printery
Lewiston, Maine
1988

PUBLIC LAWS

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AS PASSED AT THE
FIRST AND SECOND SPECIAL SESSIONS
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1987

B. The commission may determine on its own motion to hold a hearing on an application, in which event it shall hold the hearing within 45 days of receiving the application.

C. Within 45 days after the commission adjourns any hearing held under this subsection, it shall make findings of fact and issue an order granting or denying approval to the applicant to construct, develop or operate the structure, subdivision or development as proposed or granting such approval upon such reasonable terms and conditions as the commission determines appropriate.

D. If the commission determines to act upon an application for approval without hearing, the commission, as expeditiously as possible, shall approve, with such terms and conditions as deemed necessary, or disapprove the application. In the event of a decision for disapproval, the commission shall notify the applicant and specify the grounds of disapproval and inform the applicant of any right to request a hearing.

E. All hearings and procedures conducted pursuant to this section shall be subject to the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, including the notice requirements in section 9051-A.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective April 1, 1988.

CHAPTER 654

S.P. 953 — L.D. 2525

AN ACT to Include Certain Prisoners Within the Provisions of the Workers' Compensation Act.

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

Sec. 1. 39 MRSA §2, sub-§5, ¶E, as enacted by PL 1987, c. 210, is repealed and the following enacted in its place:

E. The term "employee" does not include any person who is a sentenced prisoner in actual execution of a term of incarceration imposed in this State or any other jurisdiction for a criminal offense, except in relation to compensable injuries suffered by the prisoner during incarceration and while the prisoner is:

(1) A prisoner in a county jail under final sentence of 72 hours or less and is assigned to work outside of the county jail;

(2) Employed by a private employer;

(3) Participating in a work release program; or

(4) Sentenced to imprisonment with intensive supervision under Title 17-A, section 1261.

Sec. 2. 39 MRSA §102-A, as enacted by PL 1987, c. 559, Pt. B, §43, is repealed and the following enacted in its place:

§102-A. Incarceration of employee

1. Compensation while incarcerated. No compensation for incapacity under section 54-B or 55-B may be paid to any person during any period in which that person is a sentenced prisoner in actual execution of a term of incarceration imposed in this State or any other jurisdiction for a criminal offense, except in relation to compensable injuries suffered during incarceration and while the prisoner is:

A. Employed by a private employer;

B. Participating in a work release program; or

C. Sentenced to imprisonment with intensive supervision under Title 17-A, section 1261.

2. Compensation forfeited. All compensation which is not payable under subsection 1 is forfeited.

Sec. 3. Application. This Act shall apply only to injuries which occur after the effective date of this Act.

Effective August 4, 1988.

CHAPTER 655

H.P. 1853 — L.D. 2536

AN ACT to Clarify the Authority of Harbor Masters.

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

Whereas, the Legislature passed last year comprehensive legislation dealing with regulation of harbors; and

Whereas, there is some question of interpretation of a key provision in the Maine Revised Statutes, Title 38, section 7; and

Whereas, last year's legislation is to take effect April 1, 1988; and

Whereas, this date will have gone by before the necessary clarification can be made unless legislation is passed on an emergency basis; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Con-

stitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 38 MRSA §1, first ¶, as repealed and replaced by PL 1987, c. 412, §§1 and 8, is repealed and the following enacted in its place:

The municipal officers of a town, on request by any person desiring mooring privileges or regulation of mooring privileges for boats or vessels, shall appoint a harbor master for a term of not less than one year, who shall be subject to all the duties and liabilities of that office as prescribed by state law, municipal ordinances and regulations adopted by the municipal officers, municipal harbor commissioners, municipal port authorities or other such bodies empowered to regulate municipal harbors. The municipal officers may establish the harbor master's compensation and, for cause by them declared in writing, after due notice to the officer and hearing, if requested, remove the harbor master and appoint another one.

Sec. 2. 38 MRSA §2, as amended by PL 1987, c. 412, §§2 and 8, is further amended to read:

2. Rules for channel lines; enforcement

The municipal officers of all maritime towns and plantations, other bodies empowered to regulate municipal harbors and the county commissioners in the case of maritime unorganized townships may make rules and regulations, with suitable provision for enforcement, for the keeping open of to keep open convenient channels for the passage of vessels in the harbors and waterways of the towns or townships for which they act, and may establish the boundary lines of those channels and assign suitable portions of their harbors and other coastal and tidal waters within their jurisdiction for anchorages.

In the event fishing gear is within the boundary lines of a channel in violation of local rules, the harbor master may issue a warning of navigational interference and may commence court action to order removal of that gear.

Such rules and regulations as may be made by those municipal officers, other bodies empowered to regulate harbors or county commissioners shall be enforced and carried out by the harbor master of that town or unorganized township, or any other law enforcement officer of the State or any political subdivision of the State.

The harbor master may appoint deputies who, under his direction, shall enforce and carry out the rules and regulations of this section.

Sec. 3. 38 MRSA §3, as repealed and replaced by PL 1987, c. 412, §§3 and 8, is repealed and the following enacted in its place:

§3. Mooring sites

In all harbors wherein channel lines have been established by the municipal officers, as provided in section 2, and in all other coastal and tidal waters and harbors where mooring rights of individuals are claimed to be invaded and protection is sought of the harbor master, the harbor master shall assign and indicate only to the masters or owners of boats and vessels the location which they may occupy for mooring purposes and shall change the location of those moorings from time to time when the crowded condition of that harbor, the need to conform to section 7-A or other conditions render the change desirable.

Mooring assignments shall not be transferred. Assignments shall not be rented unless the provision for rental was part of the agreement when the mooring was assigned.

Assignment of these mooring privileges does not confer any right, title or interest in submerged or intertidal lands owned by the State. To the extent that there is any inconsistency between this subchapter and any law which establishes or otherwise provides for a port authority, board of harbor commissioners or similar authority for any coastal waters of the State, that inconsistency shall be resolved in favor of this subchapter.

Whenever practicable, the harbor master shall assign mooring privileges in those waters where individuals own the shore rights to a parcel of land, are masters or owners of a boat or vessel and are complainants, and shall locate suitable mooring privileges therefor for boats and vessels, temporarily or permanently, as the case may be, fronting their land, if so requested, but not to encroach upon the natural channel or channels established by municipal officers; provided that not more than one mooring may be assigned to any shore-front parcel of land under this privilege. Notwithstanding section 11, persons who, prior to January 1, 1987, owned shore rights of at least 100 feet of frontage regardless of the size of the lot shall have mooring privileges assigned according to this section. The limitation of one mooring assigned under this privilege shall not prevent the owner of a shore-front parcel from receiving additional mooring assignments under the allocation system for all other residents.

A harbor master may refuse to assign mooring privileges to any vessel or boat owner or master who has not paid any fee, charge for services, forfeiture or penalty levied pursuant to this subchapter.

Sec. 4. 38 MRSA §5, first ¶, as repealed and replaced by PL 1987, c. 412, §§5 and 8, is amended to read:

A harbor master, upon receiving complaint to him by from the master, owner or agent of any vessel, shall cause any other vessel or vessels obstructing the free movement or safe anchorage of that vessel to remove to a position to be designated by him the harbor master and to shall cause, without any complaint being made to him the

harbor master, any vessels anchoring within the channel lines as established by the municipal authorities, as provided in section 2, to remove to such anchorage as he the harbor master may designate. ~~Whoever neglects or refuses to obey the orders of the harbor master is guilty of a Class E crime.~~

Sec. 5. 38 MRSA §7, as amended by PL 1987, c. 412, §§6 and 8, is repealed and the following enacted in its place:

§7. Relation to other laws

Nothing in this subchapter may be construed to be a limitation on the authority of municipalities to enact ordinances to regulate the assignment or placement of moorings and other activities in their harbors. These ordinances may include, but need not be limited to: A process for assigning mooring privileges and determining the location of moorings; a waiting list for the assignment of mooring privileges; a fee schedule; construction standards for moorings; time limits on the mooring of vessels; a process for appeals from decisions of the harbor master; and provisions which establish a harbor commission or committee to administer the ordinance or ordinances and oversee the duties of the harbor master. Regulations adopted by the municipal officers under section 2 shall remain in effect unless the municipality's legislative body enacts an ordinance pertaining to the same matter pursuant to the Constitution of Maine, Article VIII, Part 2, and Title 30, section 1917.

Sec. 6. 38 MRSA §7-A is enacted to read:

§7-A. Waiting lists; nonresident moorings

1. Waiting lists. If a municipality receives more applications for mooring privileges on state-owned lands that are controlled by its rules or ordinances than there are mooring spaces, the municipality shall assign spaces as they become available from a waiting list or lists according to its rules or ordinances, except as provided in this section. Waiting lists in effect at the time that this section becomes law may continue in effect, but persons shall be selected from those lists in accordance with the allocation provisions of this section. If at the time a person applies for a mooring there is no waiting list, this person may be assigned a mooring without regard to the allocation provisions of this section.

2. Allocations to nonresidents. If there are applicants who are nonresidents who wish to moor a vessel the principal use of which is noncommercial and less than 10% of the moorings are currently assigned to persons fitting this description, the next mooring available shall be assigned to the first such person on the list. If there are applicants who are nonresidents who wish to moor a vessel the principal use of which is commercial and less than 10% of the assigned moorings are currently assigned to persons fitting this description, the next mooring available shall be assigned to the first such person on the list. If both nonresident noncommercial and non-

resident commercial assignments are below 10% and there are both types of applicants on the waiting list, the available space shall be assigned to an applicant in the category that is the farthest below 10%. The burden of proof in determining residence and the principal use of a vessel shall be upon the applicant.

Each year, persons with mooring assignments shall report to the harbor master their anticipated residency status for the next year and whether they anticipate the principal use of their boats to be commercial or noncommercial. The harbor master shall update the percentage of mooring holders in each category from this data.

It is not a requirement of this section that a person lose a current mooring assignment to meet the objectives of this section.

Shorefront property owners shall be assigned mooring privileges as established in section 3.

If the mooring fee charged to nonresidents exceeds \$20 a year, the fee charged shall be reasonable in relation to the costs involved in providing that mooring and shall not exceed 5 times the amount charged to residents.

This subsection shall be construed broadly in order to accomplish the distribution of moorings to nonresidents as specified in this section.

Sec. 7. 38 MRSA §10, as enacted by PL 1987, c. 412, §§7 and 8, is amended to read:

§10. Harbor master liability

In addition to the immunities from liability and the limitations and defenses provided under the Maine Tort Claims Act, Title 14, sections 8103, 8111 and 8112, a harbor master who, in the performance of his statutory duties as set forth in sections 4 and 5, causes any damage to property or any injury to a person shall not be liable for damage or injury, unless the damage or injury is a direct result of the gross negligence, gross recklessness or bad faith intentional misconduct of the harbor master.

Sec. 8. 38 MRSA §12 is enacted to read:

§12. Violation of subchapter

Whoever neglects or refuses to obey any lawful order of a harbor master authorized pursuant to this subchapter commits a Class E crime.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect on April 1, 1988.

Effective April 1, 1988.