

**Addendum to Report to the Agriculture, Conservation, and Forestry Committee  
on the Proposed Lease Rent Schedule for the Submerged Lands Program**

December 18, 2008

As directed by Public Law, Chapter 540, on November 19, 2008, the Bureau of Parks and Lands presented its report and recommendations for revisions to the submerged lands lease rent schedule to be implemented upon repeal of the current \$1,200 maximum rental cap scheduled for June 31, 2009. Following the presentation and discussion of the report, the committee directed the bureau to reexamine its proposal regarding lease rates for facilities offering boat slip rentals as well as the current minimum lease rental rate of \$100 per year for all leases.

The Bureau has examined those two issues and prepared the attached revised revenue projections under the proposed rent schedule in comparison to the current annual lease revenues with the current \$1,200 cap in place and with the cap removed (Appendix A). The appendix also provides estimates of revenue growth over a 10-year period assuming that significant rent increases are allowed to be phased-in over five years. We would also note that the attached projections are conservative in that they do not include new leases being added to the program or the influence of changes to municipally assessed property values over the next 10 years.

The revised projections restore the rent from facilities offering boat slip rentals to the current rate of 2 percent of the gross income for commercial fishing vessels and 4 percent of gross income for recreational vessels. This change increases projected revenues by approximately \$70,000 per year. The bureau also proposes to raise the minimum lease rental rate from the \$100 rate established in 1996 to \$150 per year. This change increases annual revenues by approximately \$20,000. The above changes combined total approximately \$90,000 per year based on existing leases.

A copy of the proposed legislation incorporating the above changes and other recommendations contained in the Bureau's report is also attached.

# Appendix A

## Submerged Lands Leases

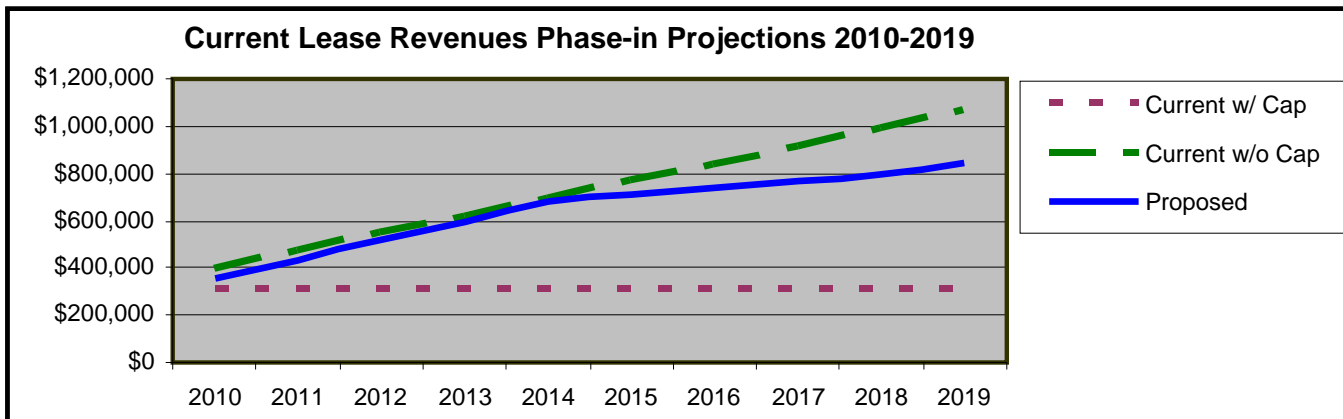
| Owner type    | Acreage    | Rent w/ Cap      | Rent w/o Cap       | Proposed Rent    | Percent    | # leases   |
|---------------|------------|------------------|--------------------|------------------|------------|------------|
| Commercial    | 167        | \$174,000        | \$870,000          | \$586,880        | 82.3       | 274        |
| Public*       | 70         | \$0              | \$0                | \$0              | 0          | 200        |
| Private       | 14         | \$92,000         | \$108,240          | \$61,070         | 10.2       | 383        |
| Private Org.  | 8          | \$24,000         | \$57,550           | \$14,420         | 5.4        | 51         |
| Comm. Fishing | 8          | \$22,000         | \$22,200           | \$17,890         | 2.1        | 59         |
| <b>Totals</b> | <b>267</b> | <b>\$312,000</b> | <b>\$1,057,990</b> | <b>\$680,260</b> | <b>100</b> | <b>967</b> |

\* Public and other facilities that provide free public access are not charged lease fees



### Lease Revenues 10-year Phase-in Projections

| YEAR                   | 2010      | 2011      | 2012      | 2013      | 2014      | 2015      | 2016      | 2017      | 2018      | 2019        |
|------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-------------|
| <b>Current w/ Cap</b>  | \$310,000 | \$310,000 | \$310,000 | \$310,000 | \$310,000 | \$310,000 | \$310,000 | \$310,000 | \$310,000 | \$310,000   |
| <b>Current w/o Cap</b> | \$394,240 | \$468,482 | \$542,720 | \$616,960 | \$691,200 | \$765,442 | \$839,682 | \$913,922 | \$988,162 | \$1,062,422 |
| <b>Proposed</b>        | \$355,284 | \$436,528 | \$517,173 | \$599,018 | \$680,261 | \$709,536 | \$737,917 | \$767,434 | \$798,132 | \$848,566   |



## An Act to Amend Provisions of The Submerged Lands Law

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

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

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

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

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

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

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

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

- (1) The director shall charge the lessee a ~~base~~ rent that practically approximates the fair market rental value of the submerged land. The reduction factors and base rate for use categories are as follows:
  - (a) A reduction factor of 0%, with no base rate, or ~~no~~ rental fee, for nonprofit organizations or publicly owned facilities that offer free public use or public use with nominal user fees. Public uses include, but are not limited to, municipal utilities and facilities that provide public access to the water, town wharves, walkways, fishing piers, boat launches, parks, nature reserves, swimming or skating areas and other projects designed to allow or enhance public recreation, fishing, fowling and navigation and for which user fees are used exclusively for the maintenance of the facility;
  - (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 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 that date 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 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 adjust the submerged lands rent consistent with similar facilities and leases 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 and other projects where municipally assessed value or land based appraisals are unavailable or may not accurately reflect the submerged land's value as determined by the director, the annual rental rate and other public compensation as appropriate may be established by negotiation between the bureau and the applicant.

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

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

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

(5) No portion of an existing or proposed lease may be transferred from a person subleasing that portion to provide berthing space for any boat or vessel except for a transfer to heirs upon death of the sublessee holder or a transfer to the original leaseholder subject to terms agreed to by the

lessor and sublessee at the time of the sublease. This subparagraph does not apply to any subleasing arrangements entered into before June 15, 1989; and

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

- (a) Will not unreasonably interfere with navigation;
- (b) Will not unreasonably interfere with fishing or other existing marine uses of the area;
- (c) Will not unreasonably diminish the availability of services and facilities necessary for commercial marine activities; and
- (d) Will not unreasonably interfere with ingress and egress of riparian owners.

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

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

D. The director may establish a reasonable minimum rent to which any lease is subject, not to exceed \$150 ~~400~~ per year.

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

- 9. Public compensation.** When the director determines that the public should be compensated for the loss or diminution of traditional and customary public uses resulting from the activities proposed by the lessee, the director may negotiate with the lessee to provide walkways, boat launching ramps, parking space or other facilities or negotiate a fee in lieu of such facilities as a condition of the lease. The determination of loss or diminution of traditional and customary public uses and appropriate public compensation must be made in consultation with local municipal officials.

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

## SUMMARY

This bill amends the definition of “fair market rental value” and adjusts rental rates for submerged lands leases to be more fair and equitable, raises the minimum rent from \$100 to \$150 annually, and provides for gradual adjustments to rental rates based on changes in assessed property values and programmatic cost increases over time. The bill provides for the phase-in of rental increases for leaseholders starting in 2010 whose adjusted rent will increase above \$1,200 following the repeal of the \$1,200 maximum rental cap on June 30, 2009. The bill also replaces the definition of “large-scale projects” with a new definition for “off-shore projects” and authorizes the Director of the Bureau of Parks and Lands within the Department of Conservation to negotiate rental terms for the leasing of those facilities.