

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1798

H. P. 1390

House of Representatives, April 7, 1975

On Motion of Mr. Drigotas of Auburn, referred to Committee on Taxation.
Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Mahany of Easton.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT Concerning the Potato Tax and the Maine Potato Commission.

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

Sec. 1. 5 MRSA § 131, last sentence, is amended to read:

This section shall not apply to county or town officers or to the Maine Potato Commission.

Sec. 2. 5 MRSA § 134, is amended by adding at the end the following new paragraph:

The Treasurer of State shall not withdraw any moneys deposited by the Maine Potato Commission except upon the authority of the treasurer of that commission.

Sec. 3. 5 MRSA § 136, is amended by adding at the end the following new paragraph:

The Treasurer of the Maine Potato Commission shall furnish the Treasurer of State a monthly report showing the banks and places in which moneys of the State collected by that commission have been kept or deposited during that preceding month and the amount at the time of that report, which report shall be included in the exhibit prepared under this section.

Sec. 4. 36 MRSA § 4562, sub-§ 6, as last repealed and replaced by PL 1971, c. 428, § 1, is amended to read:

6. Shipper. "Shipper" shall mean any person, partnership, association, firm or corporation engaged in the shipping of potatoes or transporting his own potatoes, whether as owner, agent or otherwise, to other than a licensed certified shipper, or engaged in the processing of potatoes into food or starch.

Sec. 5. 36 MRSA § 4563, is amended by inserting before subsection 1 a new paragraph to read:

Authority for the administration of this chapter is hereby vested in the Maine Potato Commission.

Sec. 6. 36 MRSA § 4563, sub-§ 3, as last amended by PL 1971, c. 622, § 128, is repealed and the following enacted in place thereof:

3. Term. Each member appointed under this chapter shall assume office on September 1st of the year appointed and shall serve for a term of 2 years or until a successor is duly appointed and qualified. No member is eligible for reappointment to the commission for a period of one year from the date of expiration of the 2nd of 2 consecutive full 2-year terms. To fill any vacancy, however caused, the commissioner shall appoint a successor for the unexpired term, which successor shall be appointed from the same district or industry segment as was represented by the predecessor member.

Sec. 7. 36 MRSA § 4563, sub-§ 4, first sentence, as last repealed and replaced by PL 1971, c. 428, § 1, is amended to read:

At their first meeting of any fiscal year commission members shall select ~~both a chairman and, a vice-chairman and a treasurer~~ from among their number.

Sec. 8. 36 MRSA § 4563, sub-§ 5, as last repealed and replaced by PL 1971, c. 428, § 1, is repealed and the following enacted in place thereof:

5. Powers and duties. The powers and duties of the commission shall include the following:

A. To adopt, rescind, modify and amend all proper resolutions, regulations and orders for the exercise of its powers and the performance of its duties under this chapter;

B. To contract and be contracted with approval of the Bureau of Accounts and Control under Title 5, section 1541, shall not be required of any contract undertaken under the power of this paragraph;

C. To employ an executive director and to provide for the employment of such other agents and staff as it deems necessary and to fix their salaries and terms of employment, which employment shall not be subject to the Personnel Law;

D. To make such advertising contracts and other agreements as it deems necessary;

E. To keep books, records and accounts of all its activities, which shall be open to inspection and audit by the State at all times;

F. To lease, purchase or own the facilities, equipment and supplies it deems necessary to the proper administration of this chapter;

G. After public hearing and subject to Title 7, chapter 103, subchapter X, to define and describe such grades of potatoes that may be advertised and

promoted by the commission pursuant to this chapter and to define and designate the character of brands, labels or other distinctive marks under which Maine potatoes may be marketed in order to secure the greatest returns to producers and meet the requirements of its advertising and promotion campaigns;

H. Subject to Title 7, chapter 103, subchapter X, to devise and arrange for the application of a seal, label, brand, package or other suitable device for protecting the identity of the original package of Maine potatoes as close to the ultimate consumer as possible;

I. To conduct, or contract for the carrying on, of research in connection with the production and marketing of potatoes, including study and research dealing with the manufacture and marketing of potato products and the extension and stabilization of markets and to disseminate information with respect to such research;

J. To accept grants, donations and gifts of funds from any source for expenditure for any purpose consistent with this chapter; and

K. To cooperate with any local, state or national organization or agencies, whether created by law or voluntary, engaged in activities similar to those prescribed by this chapter, and to enter into contract with such organizations or agencies for carrying on joint research, education and publicity in reciprocal pursuit of mutual objectives.

Sec. 9. 36 MRSA § 4563, sub-§§ 6 and 7, are enacted to read:

6. Receipt and disbursement of funds. The treasurer shall be responsible for supervising the collection and disbursement of commission funds. Any instrument receipting or disbursing funds on behalf of the commission shall be signed by the treasurer and cosigned by the chairman of the commission. The treasurer and the chairman shall furnish surety bonds of \$50,000 each to the commission, the fees for which bonds shall be paid by the commission as an expense. Any employee of the commission designated by the treasurer to collect or disburse funds shall also furnish a surety bond of \$50,000, the fee for which bond shall be paid by the commission as an expense.

7. Audit. The State Department of Audit shall conduct an annual audit of the commission and shall report the results of its audit to the Governor, to the Legislature and to the commission.

Sec. 10. 36 MRSA § 4565, as last repealed and replaced by PL 1971, c. 428, § 2, is amended to read:
§ 4565. Rate of tax

A tax levied and imposed at the rate of ~~\$.015~~ \$.025 per hundredweight on all potatoes raised in this State, except that no tax shall be imposed upon any potatoes which are retained by the grower to be used by him for seed purposes or for home consumption.

Sec. 11. 36 MRSA § 4565-A is enacted to read:

§ 4565-A. Tax liability

1. Shipper. If a grower sells potatoes under this chapter to a certified shipper, the shipper shall be liable for the tax imposed under section 4565 and shall pay that tax in accordance with section 4569, subsection 1.

2. Grower. If a grower sells potatoes to anyone other than a certified shipper under this chapter, the grower shall be liable for the tax imposed under section 4565 and shall pay that tax in accordance with section 4569, subsection 2.

Sec. 12. 36 MRSA § 4567 is repealed and the following enacted in place thereof:

§ 4567. Application; certificate

Every shipper of potatoes, as defined in section 4562, shall file an application with the Maine Potato Commission on forms prescribed and furnished by the said commission which shall contain the name under which such shipper is transacting business within the State, the place or places of business and location of loading and shipping places and agents of the shipper; the names and addresses of the several persons constituting a firm or partnership and, if a corporation, the corporate name and the names and addresses of its principal officers and agents within the State. The commission shall then issue a certificate to the shipper and no shipper shall sell or ship any potatoes, as defined in section 4562, until such certificate is furnished as required by this section.

Sec. 13. 36 MRSA § 4568, as last repealed and replaced by PL 1971, c. 428, § 3, is repealed and the following enacted in place thereof:

§ 4568. Tax deducted from selling price

Each shipper purchasing potatoes and paying, or becoming liable to pay, the tax imposed by section 4565 shall charge and collect from the seller $\frac{1}{2}$ the tax imposed by section 4565 to be deducted from the purchase price of all potatoes subject to the tax so purchased by such shipper.

Sec. 14. 36 MRSA § 4569, as last amended by PL 1971, c. 428, § 4, is repealed and the following enacted in place thereof:

§ 4569. Records; tax payments; deposits

1. Payment of tax; shipper. Every shipper shall keep as a part of his permanent records a record of all purchases, sales and shipments of potatoes, which said records shall be open for inspection at all times. Every shipper shall, on or before the 15th day of the month, render a report to the commission stating the quantity of potatoes received, sold or shipped by him during the preceding calendar month, on forms to be furnished by said commission and said report shall contain such further information pertinent thereto as said commission shall prescribe. At the time of filing said report, said shipper shall pay to the commission the tax for which he is liable under section 4565-A at the rate set forth in section 4565.

2. **Grower.** Every grower shall keep as part of his permanent records a record of all sales to any individual, partnership, corporation or other legal entity not a certified shipper under this chapter, which records shall be open for inspection at all times and every grower shall, on or before the 15th day of the month render a report to the commission stating the quantity of potatoes sold by him during the preceding calendar month to individuals, partnerships, corporations or other legal entities not certified shippers under this chapter. This report shall be made on forms to be furnished by the commission and the report shall contain any further pertinent information which the commission shall prescribe. At the time of filing this report, the grower shall pay to the commission the tax for which he is liable under section 4565-A at the rate set forth in section 4565.

3. **Deposits.** The commission shall deposit daily all receipts under this section to its accounts in such commercial bank or banks as it may determine.

Sec. 15. 36 MRSA § 4570 is repealed and the following enacted in place thereof:

§ 4570. Inspections

The commission or its duly authorized agent shall have authority to enter any place of business of any shipper, or grower, any car, boat, truck or other conveyance in which potatoes are to be transported and to inspect any books or records of any shipper or grower for the purpose of determining what potatoes are taxable under this chapter, or for the purpose of determining the truth or falsity of any statement or return made by any shipper.

Sec. 16. 36 MRSA § 4571, as last amended by PL 1971, c. 584, § 1, is repealed and the following enacted in place thereof:

§ 4571. Appropriation of moneys received

Moneys received through this chapter by the commission shall be appropriated and used by said commission for the following purposes:

1. **Collection and enforcement.** For the collection of the tax provided for by section 4565 and the enforcement of this chapter;

2. **Better methods.** A sum which shall equal at least \$50,000 shall be used and applied for the purpose of investigating and determining better methods of production, shipment and merchandising of potatoes and for the manufacture and merchandising of potato by-products;

3. **Advertising.** For the general purpose of merchandising and advertising Maine potatoes for food and for seed purposes;

4. **Administration.** For expenses in connection with administering this chapter, including employment of necessary staff and contracting for the performance of required services; participating jointly with any organization of growers, shippers or processors in this State in financing such projects, programs and activities as are complementary to the purposes of this chapter; provided that the annual sum appropriated and expended pursuant to this subsection shall not exceed an amount equal to 15% of the total moneys received in any given year.

5. **Balance of funds.** The funds remaining over and above the expenses of carrying out this chapter, including the expenditures authorized under subsections 2 and 3, shall not lapse, but shall be carried in a continuous carrying account to be expended for the purposes of this chapter.

Sec. 17. Applicability. Nothing in this Act shall affect the length of term to which any member of the Maine Potato Commission has been appointed before the effective date of this Act, nor the validity of the appointment. However, upon expiration of the term of any member serving on the commission on the effective date of this Act, that vacancy shall be filled by appointment or reappointment for a term of 2 years and the person so appointed or reappointed shall be subject to all provisions of this Act.

FISCAL NOTE

It is estimated that passage of this bill will result in an increase in revenue during an average growing year of approximately \$325,000.

STATEMENT OF FACT

This bill establishes a series of changes to the law governing the Maine Potato Commission, including provisions for 2-year terms of members, provisions to limit the number of consecutive terms which a member may serve, provisions for a commission treasurer, provisions detailing the powers and duties of the commission and provisions for the receipt of taxes levied under the potato tax.

This bill also increases the potato tax to 2.5¢ per hundredweight.