

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1954

H. P. 1897

Office of the Clerk of the House

Governor's Bill to The Committee on Agriculture suggested.

EDWIN H. PERT, Clerk

Presented by Mr. Mahany of Easton.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-EIGHT

AN ACT to Create a Maine Potato Board.

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

Sec. 1. 7 MRSA § 402, 5th sentence is amended to read:

He may enter into agreements or cooperative arrangements with any person, firm or corporation for the purpose of advertising and increasing the sale and consumption of Maine farm products or disseminating information concerning the same, **except that the advertising and promotion of potatoes shall be the responsibility of the Maine Potato Board.**

Sec. 2. 7 MRSA § 441-A is enacted to read:

§ 441-A. Authority of Maine Potato Board

The authority granted the commissioner under sections 442 to 445, as it pertains to the marketing, advertising, grading and labeling of potatoes, shall be vested in the Maine Potato Board.

Sec. 3. 7 MRSA § 951, first ¶, as repealed and replaced by PL 1965, c. 219, § 2, is repealed and the following enacted in its place:

The Maine Potato Board is authorized and empowered, after holding public hearing, to establish and promulgate official definitions and standards for grading or classifying, packing and labeling potatoes and to change these official standards from time to time.

Sec. 4. 7 MRSA § 953, as enacted by PL 1971, c. 271, is repealed and the following enacted in its place:

§ 953. False or misleading potato branding or labeling

It shall be unlawful for any person, firm, association, organization or corporation to expose for sale or sell at full sale or retail, to ship, deliver or consign, or have in possession

potatoes prepared for market in containers which bear any statements, design or device regarding such potatoes which shall be false or misleading, in any particular, or potatoes packed in such manner that the face or shown surface is not an average of the contents of the package, or potatoes that fail to meet the grade requirements established and promulgated by the Maine Potato Board or potatoes that are accompanied by a bill of lading false or misleading in any particular. When a violation of this section occurs, it is deemed to have taken place at the point where that violation first became evident to the commissioner or his duly authorized representative.

Sec. 5. 7 MRSA § 954-A, first sentence, as amended by PL 1975, c. 687, § 1, is repealed and the following enacted in its place:

Whenever the commissioner or his duly authorized representative shall find from inspection, as authorized in section 956, that potatoes are being sold, exposed for sale, or shipped for sale in containers, and the containers bear any statements, design or device regarding those potatoes which shall be false or misleading, in any particular, or if potatoes are packed in such manner that the face or shown surface is not an average of the contents of the package, or if these potatoes fail to meet the minimum grade requirements established as a state grade by the Maine Potato Board, or if the potatoes are not accompanied by a proper bill of lading or invoice as provided by section 952, then the commissioner, or his duly authorized representative, may seize these potatoes so that they cannot be sold, offered, exposed for sale or transported.

Sec. 6. 7 MRSA § 993, sub-§ 6, ¶ C, as repealed and replaced by PL 1965, c. 513, § 9, is repealed and the following enacted in its place:

C. State of Maine Standards for Potatoes issued by the Maine Potato Board in accordance with section 951.

Sec. 7 36 MRSA c. 709, as last amended by PL 1975, c. 554, § 7, is repealed.

Sec. 8. 36 MRSA c. 719 is enacted to read:

CHAPTER 719

MAINE POTATO BOARD

§ 4851. Purpose

The production and marketing of Maine potatoes is of such major importance to the agricultural economy of the State and to the general well-being of the people of Maine, that it is in the public interest to stabilize, conserve and promote the prosperity and welfare of the State and of the potato industry by fostering more effective advertising, more adequate research, and better methods of production, processing, transportation and marketing of potatoes grown in Maine. To this end, there is created a Maine Potato Board.

§ 4852. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. Board. "Board" means the Maine Potato Board.
2. Commissioner. "Commissioner" means the Commissioner of Agriculture.
3. Department. "Department" means the Department of Agriculture.

4. District. "District" means each one of the following potato growing areas of Maine, 6 of which shall contain as nearly equal potato acreage as practicable:

- A. District 1: Island Falls, Patten, Oakfield, Benedicta and Houlton;
- B. District 2: Bridgewater, Monticello and Mars Hill;
- C. District 3: Easton, Presque Isle, Mapleton and Ashland;
- D. District 4: Fort Fairfield and Limestone;
- E. District 5: Caribou, Washburn and Stockholm;
- F. District 6: Van Buren, Madawaska and Fort Kent; and
- G. District 7: Central and Southern Maine.

5. Fiscal year. "Fiscal year" means the 12-month period beginning July 1st and ending June 30th of the following year.

6. Grower. "Grower" means any person engaged in the commercial production of 5 or more acres of potatoes in Maine.

7. Licensed dealer. "Licensed dealer" means any person engaged in the business of buying or selling potatoes in wholesale or jobbing quantities in commerce, and licensed under Title 7, chapter 103.

8. Licensed processor. "Licensed processor" means any person, firm or corporation in Maine other than a consumer who purchases or contracts to purchase potatoes primarily for manufacture into articles of food, starch or feed by operations which change the physical form the potatoes possessed when harvested, and licensed under Title 7, chapter 103.

9. Potatoes. "Potatoes" means and includes all potatoes, whether graded or ungraded, including all potatoes sold for processing into food, but shall not include potatoes sold for processing into starch or feed, unless such potatoes are sold under a federal diversion program and paid for as grade potatoes.

10. Shipment. "Shipment" means the placement of potatoes within the State in the car, boat, truck or other conveyance in which the potatoes are to be transported.

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

§ 4853. Maine Potato Board created

1. Membership. There is hereby created and established in the Department of Agriculture the Maine Potato Board which shall consist of the following 11 members: seven growers; 2 dealers; one processor and the Commissioner of Agriculture. With the exception of the commissioner, members shall be chosen prior to July 1st of each year in which a member is to be chosen, from among 3 nominees for each position to be filled, nominated by a nominating committee of which one member shall be a member of the board, providing that:

A. One grower member shall represent each district and be elected by a plurality vote of the growers voting in that district, provided more than ½ of the eligible voters of that district actually vote;

B. The dealer members shall be elected by a majority vote of the licensed dealers residing in the State and voting; and

C. The processor member shall be elected by a majority vote of the licensed processors residing in the State and voting.

The board shall by regulation establish procedures for the conduct of election of board members, including the certification of election, except that for the initial election such regulations shall be established by the commissioner and a nominating committee appointed by him.

2. Qualifications. Members of the board shall be resident citizens of the State. Grower members shall be actively engaged in the commercial production of 5 or more acres of potatoes in the district from which they are elected, and dealer and processor members shall be actively engaged in shipping or processing potatoes produced in the State.

3. Term. Each member elected under this section shall assume office on July 1st of the year elected and shall serve for a term of 3 years or until a successor is duly elected and qualified, except that when the board is first organized one member who is a dealer and the members who are growers from districts 1, 2 and 3 shall be elected to 4-year terms, the members who are growers from districts 4, 5 and 6 shall be elected to 3-year terms, and the member who is a processor, one member who is a dealer, and the member who is a grower from district 7 shall be elected to 2-year terms. No member is eligible for reelection to the board for a period of one year from the date of expiration of the 2nd of 2 consecutive 3-year terms. To fill any vacancy, however caused, the board 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.

4. Removal. The board shall by regulations establish procedures for the removal after public hearing of members who cease to qualify, or for inefficiency, neglect of duty or misconduct in office.

5. Officers. At their first meeting of any fiscal year board members shall select both a chairman and a vice-chairman from among their number. Eight members shall be necessary to constitute a quorum and 6 concurring votes shall be required to pass any motion or approve any board action. Members of the board shall, when in the performance of their duties, be reimbursed for actual expenses incurred and receive such per diem as the board shall from time to time set.

§ 4854. Powers and duties

The powers and duties of the board, subject to Title 5, chapter 7 and 143, and Title 7, chapter 1, shall include the following:

1. Rules and regulations. To adopt and promulgate rules and regulations for the operation of the board and the administration of this chapter;

2. To contract and to be contracted with. To make contracts or enter into contracts with any local, state, federal or private agency, department, firm, corporation or association for the purpose of the following:

- A. Research in connection with the production, processing, manufacture and marketing of potatoes and potato products; and
- B. Advertising to promote Maine potatoes and potato products;
3. Committees. To establish such standing and adhoc committees as necessary for the proper conduct of its business, provided that each committee shall be chaired by a member of the board;
4. Administration. To employ an executive director to administer the policies established by the board, and to fix the salary and term of employment. The executive director, with the consent of the board, is authorized to engage sufficient clerical personnel and other employees for the efficient performance of his duties. Neither the employment of the executive director by the board nor the employment of other employees by the executive director shall be subject to the Personnel Law, except that they shall be eligible for such fringe benefits as employees under the Personnel Law;
5. Property and facilities. To lease or purchase personal property, and such facilities, equipment and supplies deemed necessary to carry out the purposes of this chapter;
6. Borrow money. To borrow money not in excess of estimated revenue from current year's crop, when deemed advisable for the well-being of the potato industry;
7. Marketing. To improve the marketing of Maine potatoes by:
 - A. Defining and describing such grade or grades of potatoes that may be advertised and sold, consistent with Title 7, sections 441 to 447, and 951 to 957, so as to provide the consuming public a consistent supply of potatoes of the highest quality;
 - B. Defining and designating the character of brands, labels, stencils or the distinctive marks under which potatoes may be marketed in order to secure the greatest returns to producers and meet the requirements of advertising campaigns;
 - C. Devising and arranging for the application of either a seal, label, brand, package or any other suitable device that will protect the identity of the original Maine pack of potatoes as near the final consumer as possible; and
 - D. Using its offices to prevent as far as practicable any substitution of other potatoes for Maine potatoes and the misrepresentation or the misbranding of Maine potatoes at any and all times, at any and all points where the board discovers the same being done.
8. Trade barriers. To prevent, modify or eliminate trade barriers restricting free flow of potatoes produced in the State, and to investigate and take necessary action to prevent unfair trade practices and to correct, where possible, trade practices which hinder marketing of potatoes produced or processed in Maine;
9. Institute actions. To institute actions before state and federal regulatory agencies, or such other body, deemed advisable for the well-being of the Maine potato industry; and
10. General welfare of the potato industry. To take all other such action deemed advisable to stabilize and protect the Maine potato industry and to safeguard the interest of potato consumers.

§ 4855. Financial accounts

The department shall keep the financial books, records and accounts of the board, which

shall be open to inspection and audit. The Department of Audit shall conduct an annual audit at the expense of the board and shall report its findings to the board and the department, and to such other agencies as required by law.

§ 4856. Rate of tax

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

§ 4857. Tax is additional

All taxes imposed and collected under this chapter shall be in addition to any other taxes legally imposed or collected under any other law of the State, now or hereafter in force.

§ 4858. Due date

The tax imposed by section 4856 shall be due upon any particular lot or quantity of potatoes as provided under section 4859.

§ 4859. Records and reports

Every shipper shall keep as a part of his permanent records a record of all purchases, sales and shipments of potatoes, which records shall be open for inspection at all times, and every shipper shall, on or before the 15th day of each month, render a report to the State Tax Assessor stating the quantity of potatoes received, sold or shipped by him during the preceding calendar month, on forms to be furnished by the State Tax Assessor, and the report shall contain such further information pertinent thereto as the State Tax Assessor shall prescribe. At the time of filing the report, each shipper shall pay to the State Tax Assessor a tax at the rate of \$.025 per hundredweight upon all potatoes so reported as purchased, sold or shipped. The State Tax Assessor shall pay over all receipts from such tax to the Treasurer of State daily.

§ 4860. Application, certificate

Every shipper of potatoes, as defined in section 4852, shall file an application with the State Tax Assessor, on forms prescribed and furnished by the State Tax Assessor 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 State Tax Assessor shall then issue a certificate to the shipper and no shipper shall sell or ship any potatoes, as defined in section 4852, until such certificate is furnished as required by this section.

§ 4861. Tax deducted from selling price

Each shipper purchasing, shipping, receiving, processing, handling or selling potatoes grown by another and paying or becoming liable to pay the tax imposed by section 4856 shall charge and collect from the person from whom the potatoes were acquired an amount equal to $\frac{1}{2}$ the rate of tax imposed by section 4856, to be deducted from the purchase price of all potatoes, subject to the tax, so purchased, shipped, received, processed, handled or sold by such shipper.

§ 4862. Inspections

The State Tax Assessor or his duly authorized agent shall have authority to enter any place of business of any shipper, or any car, boat, truck or other conveyance in which potatoes are to be transported, and to inspect any books or records of any shipper 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 and he shall have authority to delegate such power to the board, its agents or employees.

§ 4863. Appropriation of moneys received

Moneys received through this chapter by the Treasurer of State and all interest on the investment of such moneys shall be appropriated and used by the board for the following purposes:

1. **Collection and enforcement.** For the collection of the tax provided for by section 4856 and the enforcement of this chapter;
2. **Administration.** For expenses in connection with administering this chapter, including contracting for the performance of required services, provided that the annual sum expended pursuant to this subsection shall not exceed an amount equal to 20% of the total moneys anticipated for the current fiscal year;
3. **Welfare of the industry.** For all other such purposes deemed advisable to help stabilize, conserve and promote the prosperity of the Maine potato industry, consistent with the board's powers and duties; and
4. **Balance of funds.** The funds remaining over and above the expenses of carrying out this chapter, including the expenditures authorized under sub-sections 1, 2 and 3, shall not lapse, but shall be carried in a continuous carrying account to be expended for the purposes of this chapter.

§ 4864. False returns; violation, civil action for collection

Any shipper of potatoes, as defined in section 4852, who shall make any false or fraudulent report or return required by this chapter, or who shall evade or violate any of the provisions of this chapter, shall be punished by a fine of not less than \$500 not more than \$1,000. Whenever any shipper shall fail to pay any tax due under this chapter, within the time limited, the Attorney General shall enforce the payment of such tax by civil action against such shipper for the amount of such tax, either in the Superior Court in and for the county or the District Court in the division in which such shipper has his residence or established place of business.

STATEMENT OF FACT

The purpose of this bill is to reorganize the Maine Potato Commission by creating a stronger, more effective agency for the promotion of the potato industry.