

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1446

S. P. 451

In Senate, March 22, 1979

Referred to the Committee on Agriculture. Sent down for concurrence and 2,000 ordered printed.

Presented by Senator Carpenter of Aroostook.

MAY M. ROSS, Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT to Create the Maine Potato Board.

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

Sec. 1. 36 MRSA § 4562, as last repealed and replaced by PL 1975, c. 554, § 1, is repealed and the following enacted in its place:

§ 4562. Definitions

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

1. **Board.** "Board" means the Maine Potato Board, hereinafter established to replace the Maine Potato Commission and Maine Potato Council.

2. **Commissioner.** "Commissioner" means the Commissioner of Agriculture or any officer or employee of the department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

3. **District.** "District" means each one of the geographical divisions of Maine as follows:

A. **District 1:** Benedicta, Island Falls, Oakfield, Patten, Sherman, Sherman Mills, Sherman Station, Smyrna Mills, Stacyville;

- B. District 2: Hodgdon, Houlton, Linneus, Ludlow, New Limerick, North Amity;**
- C. District 3: Bridgewater, Littleton, Monticello;**
- D. District 4: Mars Hill, Robinson;**
- E. District 5: Easton;**
- F. District 6: Presque Isle, East Chapman;**
- G. District 7: Castle Hill, Mapleton, West Chapman;**
- H. District 8: Ashland, Garfield, Masardis, Portage;**
- I. District 9: Fort Fairfield;**
- J. District 10: Caswell, Limestone;**
- K. District 11: Caribou, Connor;**
- L. District 12: Crouseville, Perham, Wade, Washburn, Woodland;**
- M. District 13: New Sweden, Stockholm;**
- N. District 14: Cyr, Hamlin, Keegan, Van Buren;**
- O. District 15: Frenchville, Grand Isle, Lille, Madawaska, St. Agatha, St. David, Upper Frenchville;**
- P. District 16: Eagle Lake, Fort Kent, Fort Kent Mills, St. Francis, St. John, Soldier Pond, TR 17, Wallagrass, Winterville;**
- Q. District 17: East Penobscot, Washington;**
- R. District 18: West Penobscot, Piscataquis, Somerset; and**
- S. District 19: Androscoggin, Cumberland, Franklin, Kennebec, Knox, Lincoln, Oxford, Waldo, York.**

4. **Fiscal period and marketing year.** "Fiscal period" and "marketing year" mean the 12-month period from July 1st through June 30th of the following year.

5. **Handle.** "Handle" means to grade, pack, process, sell, transport, purchase or in any other way to place potatoes or cause potatoes to be placed in the current of commerce. The term shall not include the transportation or delivery of field run potatoes by the producer thereof to a handler for grading, storage or processing.

6. **Handler.** "Handler" means any person, except a common or contract carrier of potatoes owned by another person, who handles potatoes, including a producer who handles potatoes of his own production.

7. **Person.** "Person" means any individual, partnership, corporation, association or other entity.

8. **Plan.** "Plan" means the potato research and promotion plan issued by the commissioner pursuant to this chapter.

9. **Potatoes.** "Potatoes" means any or all varieties of Irish potatoes grown by producers in the State.

10. **Producer.** "Producer" means any person engaged in the growing of at least 10 acres of potatoes who owns or shares the ownership and risk of loss of that potato crop.

11. **Programs and projects.** "Programs" and "projects" means those research, development, advertising, education or promotion programs or projects developed by the board.

Sec. 2. 36 MRSA § 4563, as last amended by PL 1975, c. 554, §§ 2 and 3, is repealed.

Sec. 3. 36 MRSA § 4563-A, as amended by PL 1977, c. 694, § 717, is repealed.

Sec. 4. 36 MRSA § 4563-B is enacted to read:

§ 4563-B. Maine Potato Board

1. **Establishment.** There is hereby established a Maine Potato Board, herein called the "board," composed of producers from the 19 districts within the State appointed by the Commissioner of Agriculture from nominations submitted by producers in Maine.

A. It shall be the obligation of the director to attend all called meetings of the board or he shall seek his replacement by a call to his alternate.

B. The commissioner, upon recommendation of the board, shall establish through rule-making procedure, to reapportion districts in order to change the representation requirements for membership on the board.

2. **Term of office.** The term of office of board members shall be 3 years, beginning July 1st, or such other beginning date as may be approved pursuant to regulations. The terms of office of the board's initial members appointed to the board, 2 shall be appointed for one year, 2 for 2 years and one for 3 years. Thereafter, appointments shall be for 3 years. Board members shall serve during the term of office for which they are selected and have qualified.

A. No member shall serve for more than 2 full successive terms.

B. The immediate past president shall remain as a director.

3. **Nominations and selection.** The commissioner shall select the members of the board from nominations which may be made in the following manner.

A. A meeting or meetings of producers shall be held in each district to nominate members for the board. For nominations to the initial board the meetings shall be announced by the Department of Agriculture. The nomination meetings shall be held not later than 60 days after the effective date of this

chapter. Any organization designated to hold the nomination meetings shall give adequate notice of the meetings to the potato producers affected; also to the commissioner so that a representative of the commissioner, if available, may conduct the meetings.

B. After the establishment of the initial board, subsequent elections shall be made by mail ballot. The directors shall appoint a nominating committee who shall select a minimum of 3 names with available space for write-in to be placed on a mail ballot. The person receiving the most votes shall be named director and the name receiving the 2nd most votes shall be named alternate.

C. Only producers may participate in designating nominees. Each producer is entitled to one vote only on behalf of himself.

4. Acceptance. Each person approved by the commissioner as a member of the board shall qualify by filing a written acceptance with the commissioner within 10 days after being notified of the election.

5. Vacancies. To fill any vacancy caused by the failure of any person selected as a member of the board to qualify, or in the event of the death, removal, resignation or disqualification of any member, the alternate shall be appointed the director.

6. Procedure. Each district established pursuant to this chapter shall be entitled to one vote. A majority of the board members shall constitute a quorum and any action of the board shall require a majority of concurring votes of those present and voting. At assembled meetings all votes shall be cast in person or by duly authorized alternate. For routine matters which do not require deliberation and the exchange of views, and for matters of an emergency nature when there is not enough time to call an assembled meeting, the board may act upon a majority of concurring votes of its members cast by mail, telegraph or telephone. Any vote confirmed by telephone shall be confirmed promptly in writing.

Sec. 5. 36 MRSA § 4563-C is enacted to read:

§ 4563-C. Duties

The board shall, among other things, have the following duties:

1. Meet and organize. To meet and organize and to select from among its members a president and such other officers as may be necessary; to select committees and subcommittees to adopt such rules for the conduct of its business as it may deem advisable;

2. Employment; compensation; duties. To employ such persons as it may deem necessary and to determine the compensation and define the duties of each; and to protect the handling of board funds through fidelity bonds;

3. Budget. Prior to the beginning of each fiscal period, to prepare and submit to the board a budget on a fiscal period basis of the anticipated expenses in the administration of this plan including the probable costs of all programs or projects;

4. **Programs and projects.** To develop programs and projects and to enter into contracts or agreements for the development and carrying out of programs or projects of research, development, advertising or promotion, and the payment of the costs thereof with funds collected pursuant to this plan;

5. **Records.** To keep minutes, books and records which clearly reflect all of the acts and transactions of the board. Minutes of each board meeting shall be promptly reported to the commissioner and made available to the potato industry;

6. **Accounting.** To cause the books of the board to be audited by a certified public accountant at least once each fiscal period and at such other times as the board may deem necessary. The report of the audit shall show the receipt and expenditure of funds collected. A copy of each audit shall be furnished to the commissioner and a copy of each audit shall be made available at the principal office of the board for inspection; and

7. **Notice.** To give the commissioner the same notice of meetings of the board and its subcommittees as is given to its members.

Sec. 6. 36 MRSA §§ 4563-D through 4563-M are enacted to read:

§ 4563-D. **Research and promotion**

The board shall develop and notify the commissioner of programs or projects authorized in this section. The programs or projects shall provide for:

1. **Programs or projects.** The establishment, issuance, effectuation and administration of appropriate programs or projects for the advertising and promotion of potatoes and potato products; provided that any such program or project shall be directed toward increasing the general demand for Maine potatoes and Maine potato products;

2. **Research and development.** Establishing and carrying on research and development projects and studies to the end that the marketing and utilization of Maine potatoes may be encouraged, expanded, improved or made more efficient; provided that quality control grade standards and supply management programs shall be conducted under or as a part of this plan; and

3. **Sales in foreign markets.** The development and expansion of potatoes and potato product sales in foreign markets.

No advertising or promotion program shall use false or unwarranted claims in behalf of potatoes or their products.

§ 4563-E. **Expenses**

1. **Expenses authorized.** The board is authorized to incur such expenses for research, development, advertising or promotion of potatoes and potato products and such other expenses for administration, maintenance and functioning of the board as are approved by the board.

§ 4563-F. Assessment

1. **Levy of assessment.** The funds to cover the board's expenses shall be acquired by the levying of assessments upon producers as designated in regulation issued by the board. The assessments shall be levied at a rate not to exceed .025 cents per hundred-weight of potatoes handled and not more than one assessment may be collected on any potatoes.

2. **Collection of assessments.** Each producer, as specified in regulations, shall pay assessments to the board on all potatoes handled by him including potatoes he produced. Assessments shall be paid to the board at such time and in such manner as the board shall direct pursuant to regulations issued hereunder.

3. **Collection of assessments by other organizations.** The board may authorize other organizations to collect assessments in its behalf or the board may be authorized to collect assessments in behalf of other organizations, i. e., National Potato Board.

4. **Exempt from plan.** The board may exempt potatoes used for nonfood purposes, other than seed, from the provisions of this plan and shall establish adequate safeguards against improper use of the exemptions.

§ 4563-G. Operating reserve

The board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established, provided that funds in the reserve shall not exceed approximately 2 fiscal periods' expenses. The reserve funds may be used to defray any expenses authorized under this chapter.

§ 4563-H. Reports; books; records

1. **Reports.** Each designated handler shall maintain a record with respect to each producer for whom he handled potatoes and for potatoes handled which he himself produced. He shall report to the board, at such times and in such manner as it may prescribe by regulations, such information as may be necessary for the board to perform its duties under this chapter. The reports may include, but shall not be limited to, the following:

A. Total quantity of potatoes handled for each producer and for himself, including those which are exempt under the plan;

B. Total quantity of potatoes handled for each producer and for himself subject to the plan and assessments; and

C. Name and address of each person from whom he collected an assessment, the amount collected from each person and the date the collection was made.

2. **Books and records.** Each handler subject to this chapter shall maintain and make available for inspection by authorized employees of the board and the commissioner, but not to persons not subject to this chapter, such books and

records as are appropriate and necessary to carry out this plan and the regulations issued hereunder, including such records as are necessary to verify any reports required. The record shall be maintained for at least 2 years beyond the marketing year of their applicability.

§ 4563-I. Confidential treatment

All information obtained from these books, record or reports shall be kept confidential by all employees of the Department of Agriculture and of the board, and by all contractors and agents retained by the board, and only such information so furnished or acquired as the commissioner deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction or upon the request of the commissioner. Nothing in this section shall be deemed to prohibit:

1. General statements. The issuance of general statements based upon the reports of a number of handlers subject to this plan, which statements do not identify the information furnished by any person; or

2. Publication. The publication by direction of the commissioner of the name of any person violating this plan, together with a statement of the particular provisions of this plan violated by that person.

§ 4563-J. Right to the commissioner

All fiscal matters, programs or projects, rules or regulations, reports or other substantive action proposed and prepared by the board shall be submitted to the commissioner.

The commissioner shall hold a referendum on request of the board or of 15% or more of the potato producers with not more than $\frac{1}{2}$ in one district to determine whether potato producers favor the termination or suspension of this plan. He shall suspend or terminate the plan at the end of the marketing year whenever he determines that suspension or termination is favored by a majority of the potato producers within the State voting in a referendum who, during a representative period determined by the commissioner, have been engaged in the production of potatoes.

§ 4563-K. Proceedings after termination

Upon the termination of this plan, the board shall recommend not more than 5 of its members to the commissioner to serve as trustees for the purpose of liquidating the affairs of the board. The person, upon designation by the commissioner, shall become trustee of all funds and property then in the possession or under control of the board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of the termination.

The trustee shall:

1. Continuance. Continue in that capacity until discharged by the commissioner;

2. **Obligations.** Carry out the obligations of the board under any contracts or agreements entered into by it pursuant to this plan;

3. **Accounting.** Account of all receipts and disbursements and deliver all property on hand, together with all books and records of the board and of the trustees, to such person or persons as the commissioner may direct; and

4. **Assignments.** Upon the request of the commissioner execute such assignments or other instruments necessary or appropriate to vest in such person or persons full title and right to all funds, property and claims vested in the board of the trustees pursuant to this section.

Any person to whom funds, property or claims have been transferred or delivered pursuant to this section shall be subject to the same obligation imposed upon the board and upon the trustee.

A reasonable effort shall be made by the board or its trustees to return to producers any residual funds not required to defray the necessary expenses of liquidation. If it is found impractical to return the remaining funds to producers, the funds shall be disposed of in such manner as the trustees may determine to be appropriate.

§ 4563-L. Effect of termination or amendment

Unless otherwise expressly provided by the commissioner, the termination of this plan or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

1. **Affect.** Affect or waive any right, duty, obligation or liability which shall have arisen or which may thereafter arise in connection with any provision of this plan or any regulation issued hereunder;

2. **Extinguishment.** Release or extinguish any violation of this plan or any regulation issued hereunder; or

3. **Rights or remedies.** Affect or impair any right or remedies of the United States, of the Commissioner of Agriculture or of any other person with respect to any such violation.

§ 4563-M. Personal liability

No member of the board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgments, mistakes or other acts, either of commission or omission, as such member, except for acts of willful misconduct, gross negligence or those which are criminal in nature.

Sec. 7. 36 MRSA § 4571, first ¶, as repealed and replaced by PL 1975, c. 554, § 7, is amended to read:

Money received through this chapter by the ~~State Treasurer~~ Treasurer of State shall be appropriated and used by said ~~commission~~ board for the following purposes:

Sec. 8. 36 MRSA § 4571, sub-§ 1-A, as amended by PL 1977, c. 696, § 387, is repealed.

Sec. 9. 36 MRSA § 4571, sub-§ 5, as amended by PL 1977, c. 653, § 2, is further amended to read:

5. Balance of funds. The funds remaining over and above the expenses of carrying out this chapter, including the expenditures authorized under subsections 1, ~~1-A~~ 2, 3 and 4, shall not lapse, but shall be carried in a continuous carrying account to be expended for the purposes of this chapter.

STATEMENT OF FACT

The purpose of this bill is to repeal the Maine Potato Commission and the Maine Potato Council and replace it with the Maine Potato Board.