

MAINE STATE LEGISLATURE

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(Governor's Bill)
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1182

H. P. 994

House of Representatives, March 9, 1981

Referred to the Committee on Agriculture. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Mahany of Easton.

Cosponsors: Senator Carpenter of Aroostook, Representative J. Martin of Eagle Lake and Senator Emerson of Penobscot.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Improve the Quality of Packing and Marketing Maine Potatoes.

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

Sec. 1. 7 MRSA § 950, sub-§§ 2 and 3 are enacted to read:

2. **Consumer Pack.** "Consumer pack" means a unit of less than 50 pounds net weight of potatoes contained in a bag, crate or any other type of container.

3. **Shipping season.** "Shipping season" means the period after September 1st of each year and before August 31st of the following year.

Sec. 2. 7 MRSA § 951-B is enacted to read:

§ 951-B. Compliance with official standards

To achieve compliance with official standards, the commissioner may adopt, consistent with this Article and with section 402, a fee schedule for inspection of potatoes. The potato inspection fee schedule shall provide for a lower inspection rate for any person who, before the shipping season or such other time as the commissioner may, by rule, provide, has entered into a written agreement with the commissioner, on such terms as the commissioner may require, to have all consumer packs of potatoes packed by him inspected at the time of shipment.

Sec. 3. 7 MRSA § 952, 2nd sentence, as repealed and replaced by PL 1965, c. 219, § 3, is amended to read:

The person or persons responsible for packing potatoes shall be responsible for the grading.

Sec. 4. 7 MRSA c. 103, sub-c. X, Articles 1-A and 1-B are enacted to read:

ARTICLE 1-A

PACKING

§ 961. Purpose

The maintenance of high quality potatoes going to market is essential to the survival of the potato industry. The purpose of this Article is to require the licensing of packers of potatoes to facilitate the implementation of uniform quality control. The Legislature finds that the improvement of the Maine potato industry is of substantial and unique significance to the economy and well being of the people of northern Maine and the State as a whole.

§ 962. Definitions

As used in this Article, in addition to the applicable definitions in Article 1 and Article 3, the term "packer" means any person employed in the business of loading or of placing potatoes in any type of container for exposure for sale; provided that "packer" does not mean any person loading potatoes in bulk for delivery to a processor, which delivery shall occur in this State.

§ 963. Authority of the commissioner

1. **Rules.** The commissioner shall, in a manner consistent with the rule-making provisions of the Maine Administrative Procedure Act, Title 5, chapter 375, adopt such rules as he considers necessary to accomplish the provisions of this Article.

2. **Investigations.** The commissioner or his duly authorized agent may investigate, upon the complaint of any interested person, or on his own motion, the conduct and activities of any person applying for or holding a license under this Article; for that purpose he may examine the books and papers of any person and may take testimony and affidavits thereon under oath.

3. **Hearings.** The commissioner may conduct such hearings pursuant to this Article as he considers necessary in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375 and may subpoena such witnesses and documents as he considers necessary.

§ 964. License required

1. **Prohibition.** No person may pack, or cause to be packed, in consumer packs, potatoes in this State unless duly licensed as provided in this Article. Every person before acting as a packer of consumer packs shall file an application with

the commissioner for a license to be accompanied by the license fee provided in this Article.

2. **Application.** The applicant shall file an application on forms as prescribed and furnished by the commissioner, which forms shall contain such information as the commissioner may require including the full name of the person applying for the license, and if the applicant is a corporation, partnership, association, exchange, or legal representative or officer, director, partner or member thereof, all such names and positions are to be stated on the application. If the applicant is a foreign corporation, it shall certify that it is registered with the Secretary of State under Title 13-A, chapter 12, and further state the principal business address of the applicant in this State or elsewhere, the address of all places of business in this State and the name or names of the person or persons authorized to receive and accept service of lawful process upon the applicant within this State.

3. **Issuance.** The commissioner shall issue a license to the applicant if he is satisfied the applicant has truthfully and completely supplied the information required by subsection 2 and has demonstrated his character, good faith and ability to comply with applicable state law. The licensee is entitled to act in the capacity described in the license for a period of 2 years from the date of issuance.

4. **Fees.** Each license shall plainly state the name and business address or addresses of the licensee. The initial fee for each license is \$20. The license may be renewed for successive periods of 2 years upon payment of the renewal fee which is \$20.

5. **Use of fees.** All fees collected under this Article shall be paid immediately to the Treasurer of State and credited to the department for the administration of this Article and other expenses incident to the administration of the department, and shall be spent by the commissioner for the purposes for which the department is created. If any such fees are not spent during the year in which they are collected, the unexpended balance shall not lapse, but shall be carried as a continuing account and available for the purposes specified until spent.

§ 965. Violations

1. **Acts enumerated.** The commissioner or his duly authorized agent may refuse to grant or renew a license, after notice and opportunity for a hearing has been provided in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, as to adjudicatory proceedings, upon a finding that the applicant or licensee has:

A. **Knowingly made any false material statements in the procurement or renewal of the license;**

B. **Failed or refused, upon demand, to permit the commissioner or his agents to make the investigations, examinations or audits, as provided in this Article; removed or sequestered any books, records, papers or other materials necessary to the investigations, examinations or audits; or has otherwise obstructed the same;**

C. Committed 3 or more violations of the provisions of Article 1; or

D. Committed any act or conduct with regard to the handling, sale or storage of potatoes, whether of the same or different character than specified in this subsection, which constitutes or demonstrates bad faith or untrustworthiness, or dishonest, fraudulent or improper dealings.

2. Administrative Court. The Administrative Court may, in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, suspend or revoke a license upon finding any of the enumerated violations.

3. Civil penalties. Any person who violates any of the provisions of this Article or neglects or refuses to comply with the provisions of any rule or regulation promulgated under this Article is subject to the following civil penalties payable to the State to be recovered in a civil action:

A. For the first violation, a civil penalty not to exceed \$1,000; and

B. For each subsequent violation, a civil penalty not to exceed \$3,000.

ARTICLE 1-B

CENTRAL STORAGE, PACKING AND MARKETING

§ 971. Purpose

The Legislature finds that agriculture, particularly the production and marketing of potatoes, is a significant and unique component of the economy of the State and is the single most important component of the economy of northern Maine. The Legislature further finds that the potato industry in Maine is in serious decline and that unless major changes in the existing packing, storing and marketing systems are accomplished, the industry will not remain viable. The Legislature intends, through Article 1-A and this Article, to stimulate the improvement of the potato industry. The Legislature recognizes that improvement of the potato industry will benefit the entire economy and promote improvement and stabilization in the use of our agricultural resources for the benefit of the people of this State. It is the intent of the Legislature to provide the statutory framework and initial funding to begin programs for improved marketing systems, including modernization, construction and operation of storage and centralized packing facilities for potatoes.

§ 972. Potato Marketing Improvement Committee

The commissioner shall appoint an advisory committee of 9 members to be known as the Potato Marketing Improvement Committee. The Potato Marketing Improvement Committee shall advise the commissioner on the development and implementation of improved potato marketing systems, including the modernization, construction and operation of storage and central packing facilities. The Potato Marketing Improvement Committee shall also advise the commissioner concerning the funding and expenditures of the Potato Marketing Improvement Fund created pursuant to section 973. The Potato Marketing

Improvement Committee shall include one member representing the University of Maine; one member representing the Maine Potato Council; one member representing the Maine Potato Commission; one member representing the Maine Potato Sales Association; one member representing the Farmers Home Administration; one member representing the Farm Credit Service; one member representing the private finance institutions of the State; one member representing the State Development Office; and one member representing the public.

§ 973. Potato Marketing Improvement Fund

There is created a fund to be known as the Potato Marketing Improvement Fund to which shall be credited all funds received by the commissioner from any source for the development and implementation of an improved storage, packing and marketing program. Any money credited to the Potato Marketing Improvement Fund from the issuance of bonds on behalf of the State for agricultural development shall be used only for the purposes of state loans as prescribed by section 974. Repayment of these loans and interest thereon shall be credited to the Potato Marketing Improvement Fund to be available for making additional state loans for the same purposes.

§ 974. State loans

1. State loans. State loans are subject to the following conditions:

- A. No state loan may exceed 45% of the project cost;
- B. No state loan may be provided unless the applicant demonstrates a commitment of private funds of at least 10% of the project cost;
- C. State loans shall be at the interest rate established pursuant to subsection 2; and
- D. Other terms and conditions prescribed by rule by the commissioner upon consultation with the Potato Marketing Improvement Committee.

2. State loan interest rate. State loans shall be at an interest rate which is equivalent to:

- A. The rate at which the State issues its general obligation bonds; and
- B. A fee for administrative costs which shall be at a rate set by rule by the commissioner upon consultation with the Potato Marketing Improvement Committee, but which rate shall not exceed 1% of the loan.

In determining the applicable rate, the rate for the issue of state general obligation bonds which immediately preceded the date of the loan shall be used.

Sec. 5. 7 MRSA § 1012, sub-§ 3, 2nd sentence, as enacted by PL 1971, c. 366, is amended to read:

The term "broker" shall apply to nonresidents of this State, who carry on such

business in this State, ~~and have a place of business in this State~~ whether such "broker" is licensed in the state of his residence or not.

Sec. 6. 7 MRSA § 1012, sub-§ 5, ¶ C, as enacted by PL 1971, c. 366, is amended to read:

C. Nonresidents of this State who carry on the business of buying and selling potatoes in this State, ~~and have a place of business in this State~~ whether such dealer is licensed in the state of his residence or not.

Sec. 7. 36 MRSA § 4569, 2nd sentence, as amended by PL 1975, c. 554, § 6-A, is further amended to read:

At the time of filing said report, each shipper shall pay to the State Tax Assessor a tax at the rate of ~~\$.025~~ \$.03 per hundredweight upon all potatoes so reported as purchased, sold or shipped, **provided that for purposes of section 4571, subsection 1-A, paragraph B, \$.005 shall not be considered part of the total moneys received.**

Sec. 8. 36 MRSA § 4571, sub-§ 2-A, is enacted to read:

2-A. **Inspection fee. The sum which is equal to \$.005 per hundredweight shall be used by the Department of Agriculture, Food and Rural Resources to cover a portion of the cost for inspection of potatoes, including processing potatoes. The sum contributed by shipments represented by tagged seed may be designated to improve potato seed marketing.**

STATEMENT OF FACT

The Maine potato industry has been in a serious decline over the past 20 years. Once the largest producing state in the nation, Maine now ranks in 4th place. Maine potatoes, which used to be marketed heavily in most states east of the Mississippi River are now confined principally to the northeast. For example, market penetration of Maine potatoes in the past 20 years has declined 55% in Cleveland, 61% in Baltimore and Washington, 72% in Pittsburgh and 83% in Atlanta. If the trends of the past 20 years continue, Maine will not be a major producer of potatoes in the next 20 years and will be completely out of production in 40 years. The economic repercussions are substantial to the entire State and devastating to northern Maine. A substantial element of Maine pride, Maine agriculture and Maine's way of life will be destroyed.

The industry decline can be halted by improving yields per acre and by restructuring the antiquated market system. This bill commits the State to a program of market restructure which was substantially proposed by the Loring Readjustment Committee and supported by the Governor's Rural Development Committee.

The Maine potato industry now consists of about 1,700 potato storage facilities and 800 to 1,000 packing lines. Over 50% of these pack less than one load per week. Because of this extreme fragmentation and dispersion of packing facilities, it is

not possible to obtain consistent quality control to respond to the needs of the consumer or to compete with the more modern and concentrated facilities found in every other competing production area. This bill is an initial attempt at a comprehensive approach which can completely change the market system and result in a viable and growing industry.

The bill will provide for improvement of the potato industry through 4 legislative efforts. Specifically, the bill:

1. Encourages the use of the federal-state inspection service as a quality control measure by reducing the cost of the services to those who contract to use it on all their shipments, utilizing funding by the State as well as by an industry self-tax;

2. Amends the branding law to clarify the responsibility for packing and to provide for a system of spot checking;

3. Provides for licensing of packers to better coordinate quality control; and

4. Establishes the foundation to develop a program for modernization or construction of professionally-managed centralized storage, packing and marketing facilities, and for modernization and construction of other storage facilities to improve the quality of potatoes available for market.

First, the bill would promote inspection by offsetting part of the cost now paid entirely by the user. This is consistent with the practice in most other states. Fees have increased from 5 1/2¢ per cwt. in 1977 to nearly 12¢ per cwt. in 1981 causing a reduction in the amount of inspection used from 79% of the shipments to 25%. An appropriation of \$100,000 coupled with a contribution of \$100,000 raised by increasing the industry self-tax, would allow a 40% reduction in the cost of inspections. This lower cost would be available to those packers who agree to have all their loads inspected for an entire shipping season. It is anticipated that this would increase the inspection rate to over 80%.

Second, the bill changes the branding law by making it clear that the packer whose name appears on the container is responsible for the contents and by providing for seasonal inspectors to spot check noninspected shipments. An appropriation of \$25,000 will fund this.

Third, the bill requires those packing in consumer containers to meet certain minimum business standards similar to the licensing provisions for potato dealers and amends the dealer licensing provision to eliminate any distinction between nonresident dealers who happen to be physically located in Maine and those not so located.

Fourth, the bill establishes the foundation for an improved potato marketing system including modern storage and central packing facilities. This is essentially the program proposed by the Loring Readjustment Committee. This bill statutorily creates a Potato Marketing Improvement Committee to plan and administer the program and a Potato Marketing Improvement Fund to which any

money received for this purpose will be credited. It is anticipated that the funds, which may be obtained by the issuance of the agricultural development bonds, will be the initial contribution to this fund.

Past efforts to restructure the marketing system by piecemeal programs have not been successful. Restructure can only succeed if basic and general changes occur. The potato industry is apparently ready for this major effort. In April, 1980 62% of the potato growers voted to impose severe constraints on themselves to improve their market structure. The previous spring, growers and shippers of russet potatoes adopted a market order for their product which imposed quality standards equal to those of competing areas. This bill adds significant and necessary legislative support to the desire of the industry to restructure the marketing system.

The appropriation for this legislation is included in the Part II budget. One hundred and twenty-five thousand dollars is requested for Fiscal Year 1981-82 and \$130,000 is requested for Fiscal Year 1982-83.