

MAINE STATE LEGISLATURE

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(New Title)
New Draft of: H. P. 994, L. D. 1182
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1613

H. P. 1486

House of Representatives, May 18, 1981

Reported by Representative Smith from the Committee on Agriculture and
Printed under Joint Rules No. 2.

EDWIN H. PERT, Clerk

STATE OF MAINE

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

**AN ACT to Promote the Maine Potato Industry by Improving 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 § 13, as amended by PL 1973, c. 598, § 4, is further amended by adding at the end a new paragraph to read:

For the purposes of chapter 103, subchapter X, notwithstanding the provisions of the District Court Civil Rules, Rule 80E, paragraph (b), the commissioner may obtain an administrative inspection warrant upon demonstrating the statutory or other authority pursuant to which he is authorized to conduct inspections, the premises to be inspected, the purpose of the inspection and that the inspection sought is reasonable and represents a minimal intrusion in furtherance of a legitimate governmental obligation of the department. This demonstration shall be deemed to be a demonstration of probable cause.

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

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

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

Sec. 3. 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 may provide for a lower inspection rate for any person who is packing potatoes in a Maine bag as defined by section 1032, subsection 4.

Sec. 4. 7 MRSA § 952, 2nd sentence, as repealed and replaced by PL 1965, c. 219, § 3, is repealed and the following enacted in its place:

The person or persons whose name and address appear on the containers shall be responsible for grading.

Sec. 5. 7 MRSA § 957, as amended by PL 1979, c. 454, and c. 532, § 2, is repealed and the following enacted in its place:

§ 957. Violations

Any person, firm or corporation who violates any of the provisions of sections 952 to 957 or to Article 4 or neglects or refuses to comply with any of the provisions required therein or in any way violates any of those provisions shall be subject to warning and to civil penalties payable to the State to be recovered in a civil action as provided in this section.

1. **First violation.** Any person who is found by the commissioner to have committed a first violation shall be issued a warning indicating the nature of the violation and may be required to repack the potatoes in conformance with state law. A person is not subject to a civil penalty for a first violation.

2. **Violations subsequent to the first.** The following civil penalties apply to violations subsequent to the first:

A. For the 2nd violation, a civil penalty of not less than \$100 nor more than \$200;

B. For the 3rd violation, a civil penalty of not less than \$400 nor more than \$500; and

C. For the 4th and subsequent violations committed during the shipping season, a civil penalty of not less than \$1000 and, after notice and opportunity for hearing is provided by the commissioner in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, for adjudicatory proceedings, the violator may, for the remainder of the period, be subject to mandatory inspection in the manner provided in section 446.

Sec. 6. 7 MRSA c. 103, sub-c. X, Article 1-A enacted to read:

ARTICLE 1-A

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 this Article and Article 4 to stimulate the improvement of the potato industry. The Legislature finds that a strengthened 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 8 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 State Development Office and one member representing the public. Where the commissioner finds it appropriate, the members representing the Farmers Home Administration and the Farm Credit Service may serve as a loan review committee and advise him, on a confidential basis, on applications for funding.

§ 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. 7. 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. 8. 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. 9. 7 MRSA c. 103, sub-c. X, Article 4 is enacted to read:

ARTICLE 4

MAINE POTATO QUALITY CONTROL

§ 1031. Purpose

The purpose of this Article is to use a public and private partnership to create a voluntary potato quality control system to promote the sale of Maine potatoes.

§ 1032. Definitions

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

1. **Board.** "Board" means the Maine Potato Quality Control Board established pursuant to section 1033.

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

3. **Maine bag.** "Maine bag" means any consumer pack for potatoes on which appears the word "Maine" or a pictorial representation of the outline of the shape of the State, provided that the address of the producer, packer or any other person may appear at the bottom of the bag in letters not taller than 1/4 inch.

4. **Maine bag grade.** "Maine bag grade" means any of the officially established grades of potatoes as adopted by the board.

§ 1033. **Maine Potato Quality Control Board**

1. **Board.** The Maine Potato Quality Control Board is established, to consist of the following members:

- A. One representative elected by the Maine Potato Commission;
- B. Five representatives elected by the Maine Potato Council; one from each of the 3 districts defined in section 993, subsection 3, paragraphs A, C and D, and 2 from the district defined in section 993, subsection 3, paragraph B.
- C. One representative elected by the Maine Potato Sales Association;
- D. A representative of the department, appointed by the commissioner; and
- E. A person appointed by the Governor to represent consumers.

Members shall serve for staggered 2-year terms. In the initial membership, the board shall determine that 4 of its members shall serve for one-year terms.

2. **Duties.** The board shall have the following duties:

- A. To promote the quality control of potatoes made subject to this Article;
- B. To adopt grades for potatoes and identification to be used on consumer packs of potatoes to be packed in Maine bags, as authorized in this Article;
- C. To hear and resolve grievances regarding inspections;
- D. To employ and supervise staff, which staff shall not be considered state employees;
- E. To require reports of inspectors on work done under this Article;
- F. To adopt a fee schedule and require the payment of a fee to cover such portion of the expenses of the board as the board determines necessary; and
- G. To do other acts necessary to implement this Article.

3. **Finances.** The board may receive funds from any source and spend funds in furtherance of this Article. The members may be paid mileage at the rate

authorized for state employees and daily expenses as determined by the board. The board may employ staff and hire consultants. Any funds received by the board shall be placed in a nonlapsing revolving fund.

4. Standards. The board shall conduct its business consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, and the Freedom of Access laws, Title 1, chapter 13, subchapter I, but shall not be considered a state agency.

§ 1034. Inspection

The board may employ inspectors and may require payments for inspection at a rate and schedule to be determined by rule by the board.

§ 1035. Maine bag grades

1. Maine bag grades. Prior to August 1st of each year, the board shall, in a manner consistent with the rule-making provisions of the Maine Administrative Procedure Act, Title 5, chapter 375, adopt the official Maine bag grade or grades for potatoes. The Maine bag grades shall not be less than United States No. 1. Once adopted, the grades shall not change for that year.

2. Logo and Maine bag. The board shall adopt an official logo which, at a minimum, shall contain an outline of the shape of the State. Any Maine bag shall bear a statement that the contents have been inspected and meet the grade standards of the board.

§ 1036. Packing and inspection; shipping penalty; enforcement

1. Packing and inspection. No person may pack potatoes in a Maine bag unless he has given notice of intent to pack to the board.

2. Shipping. A packer shall ship in a Maine bag only those potatoes that have been determined by a duly authorized inspector to have met the standards required by this Article.

3. Penalty. Any person who violates this section is subject to the provisions of section 957.

§ 1037. Inspector licensing

1. License. The commissioner may establish standards for licensing potato inspectors for the purposes of this subchapter, conduct examinations to license and license successful applicants; provided that the commissioner may determine not to license such private inspectors if he finds that the volume of potatoes inspected by the federal-state inspection service is insufficient to reasonably and efficiently sustain the availability at the federal-state inspection service in the State. The commissioner shall charge a fee of \$10 for taking the examination and \$15 for a license. A license shall be for 2 years and may be renewed.

2. Fees. All fees collected under this section shall be paid immediately to the Treasurer of State and credited to the department for the administration of this section and other expenses incident to the administration of this subchapter. If

any 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 purpose specified until spent.

3. Revocation. The commissioner may refuse to renew and the Administrative Court may revoke the license of an inspector upon finding that the inspector has knowingly falsified information relating to inspections or his application for a license.

Sec. 10. Public Law 1981, chapter 154, sections 2 and 3 are repealed.

Sec. 11. Transition provisions. Any grades, sizes and the form of the Maine bag approved prior to the effective date of the Revised Statutes, Title 7, chapter 103, subchapter X, Article 4, by a board identical in composition to the Maine Potato Quality Control Board by the procedure set out in this Article is deemed ratified on the effective date of this Article.

Sec. 12. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1981-82	1982-83
AGRICULTURE, FOOD AND RURAL RESOURCES, DEPARTMENT OF		
Unallocated	\$131,250	\$150,000

The Commissioner of Agriculture, Food and Rural Resources shall pay these funds to the Maine Potato Quality Control Board which shall use them for the purposes of the Revised Statutes, Title 7, chapter 103, subchapter X, Article 4. The funds shall be used as follows: For administrative expenses of the board, not to exceed \$56,250 in fiscal year 1981-82, and not to exceed \$75,000 in fiscal year 1982-83; the remaining funds shall be used to reduce the cost of inspecting potatoes as provided in the above referenced in Article 4.

STATEMENT OF FACT

This new draft of L. D. 1182 is a combination of the original L. D. 1182, "AN ACT to Improve the Quality of Packing and Marketing Maine Potatoes" and part of L.D. 1439, "AN ACT to Promote the Maine Potato Industry." As such, it represents a combined approach to addressing the serious problems of the poor quality image of Maine tablestock potatoes.

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 new draft 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 each 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 new draft is an initial attempt at a comprehensive approach which can completely change the market system and result in a viable and growing industry.

This new draft provides for improvement of the potato industry through 4 legislative efforts. Specifically, the new draft:

1. Establishes a new quality control program for potatoes packed in bags labeled "Maine." The program will require a minimum grade of United States No. 1 potatoes;
2. Encourages the use of inspection by licensing private inspectors and using the federal-state inspection service as a quality control measure by authorizing the commissioner to reduce the cost of the services to those who contract to use it on all their shipments and who participate in the new Maine bag program;
3. Amends the branding law to clarify the responsibility for packing and to provide for a system of spot checking; 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 new draft proposes a voluntary quality control program. A Maine Potato Quality Control Board is established, consisting of 7 representatives elected by potato industry organizations, the Maine Potato Council, the Maine

Potato Commission and the Maine Potato Sales Association, one person representing the Department of Agriculture, Food and Rural Resources and one person representing consumers. The board will be assisted by a staff. The board will adopt official grades for potatoes packed in the Maine bags, which grades shall be a minimum of United States No. 1. Any person packing potatoes may voluntarily participate in the program by having his potatoes inspected; he then may pack them in the Maine bag. Civil penalties identical to those under the existing branding law are provided for violation of the law.

Secondly, the new draft promotes inspection of offsetting part of the federal-state 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 hundredweight in 1977 to nearly 12¢ per hundredweight in 1981, causing a reduction in the amount of inspection used from 79% of the shipments to 25%.

Thirdly, the new draft 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.

Fourthly, the new draft 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. The purpose of the latter section is to prevent a person from avoiding the licensing and bonding requirements by simply moving his office from Maine to New Brunswick or New Hampshire.

Fifth, the new draft 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 new draft 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 created. 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 new draft adds significant and necessary legislative support to the desire of the industry to restructure the marketing system.

An appropriation is included for the administrative expenses of the board and the funds to reduce the cost of inspection.