

# MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION

2  
3 ONE HUNDRED AND TWELFTH LEGISLATURE

4  
5 Legislative Document

No. 2205

6  
7 S.P. 876

In Senate, March 18, 1986

8 Approved for introduction by a majority of the Legislative Council  
pursuant to Joint Rule 26.

9 Reference to the Committee on Agriculture suggested and ordered  
10 printed.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Carpenter of Aroostook.

11 Cosponsored by Representative Lisnik of Presque Isle, Senator  
McBreairty of Aroostook and Representative Ayer of Caribou.

12 STATE OF MAINE

13  
14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-SIX

16  
17 AN ACT to Reorganize the Maine Potato  
18 Industry.  
19

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

22 Sec. 1. 5 MRSA §12004, sub-§9, ¶A, sub-¶¶(8) and  
23 (9) are repealed.

24 Sec. 2. 5 MRSA §12004, sub-§9, ¶A, sub-¶(8-A) is  
25 enacted to read:

26 (8-A) Maine Potato Industry Legislative 36 MRSA §4601  
27 Per Diem

28 Sec. 3. 36 MRSA §4561 is repealed.

29 Sec. 4. 36 MRSA §4562, as amended by PL 1979, c.  
30 541, Pt. A, §227, is repealed.

31 Sec. 5. 36 MRSA §4563, as amended by PL 1983, c.  
32 812, §§277 and 278, is repealed.

1           Sec. 6. 36 MRSA §4563-A, as amended by PL 1977,  
2      c. 694, §717, is repealed.

3           Sec. 7. 36 MRSA §4565, as amended by PL 1983, c.  
4      766, §1, is repealed.

5           Sec. 8. 36 MRSA §4566 is repealed.

6           Sec. 9. 36 MRSA §4567, as amended by PL 1977, c.  
7      694, §718, is repealed.

8           Sec. 10. 36 MRSA §4568, as repealed and replaced  
9      by PL 1975, c. 554, §6, is repealed.

10          Sec. 11. 36 MRSA §4569, as amended by PL 1985,  
11      c. 506, Pt. A, §77, is repealed.

12          Sec. 12. 36 MRSA §4570 is repealed.

13          Sec. 13. 36 MRSA §4571, as amended by PL 1983,  
14      c. 812, §279, is repealed.

15          Sec. 14. 36 MRSA c. 710 is enacted to read:

16                               CHAPTER 710

17                               POTATO INDUSTRY

18      §4601. Legislative findings and purpose

19           The Legislature finds that the potato industry is  
20      an essential component of the economic and social  
21      welfare of the State, particularly in portions of the  
22      State which are stressed by lack of other economic  
23      opportunities. Accordingly, the Legislature finds  
24      that special efforts by State Government are war-  
25      ranted in order to mobilize and improve the Maine po-  
26      tato industry.

27           The Legislature also finds that the current,  
28      highly fragmented organization of the Maine potato  
29      industry inhibits the type of effective leadership  
30      which is needed if that industry is to survive. The  
31      purpose of this chapter is to create a unified orga-  
32      nizational structure, under the auspices of a state  
33      agency, to provide for the advancement of the Maine  
34      potato industry in the public interest and for the

1 public good. Under this new organizational struc-  
2 ture, all elements of the Maine potato industry will  
3 be represented and will work together under the lead-  
4 ership of a unified, public board to solve the prob-  
5 lems facing the industry.

6 §4602. Definitions

7 As used in this chapter, unless the context indi-  
8 cates otherwise, the following terms have the follow-  
9 ing meanings.

- 10 1. Board. "Board" means the Maine Potato Board.
- 11 2. Dealer. "Dealer" means any person, defined  
12 as a dealer under Title 7, section 1012, who is li-  
13 censed as a dealer under Title 7, section 1015.
- 14 3. District. "District" means each one of the  
15 geographical divisions of Maine, as follows:
- 16 A. District One: Cyr, Eagle Lake, Fort Kent,  
17 Fort Kent Mills, Frenchville, Grand Isle, Hamlin,  
18 Keegan, Lille, Madawaska, New Canada Plantation,  
19 St. Agatha, St. David, St. Francis, St. John,  
20 Soldier Pond, T.R. 17, Upper Frenchville, Van  
21 Buren, Wallagrass and Winterville;
- 22 B. District 2: Caribou, Connor Township,  
23 Crouseville, New Sweden, Perham, Stockholm, Wade,  
24 Washburn, Westmanland and Woodland;
- 25 C. District 3: Caswell Plantation, Fort  
26 Fairfield and Limestone;
- 27 D. District 4: Ashland, Castle Hill, Chapman,  
28 Easton, Mapleton, Masardis, Nashville, Presque  
29 Isle and Westfield;
- 30 E. District 5: Blaine, Bridgewater, E. Planta-  
31 tion and Mars Hill;
- 32 F. District 6: Amity, Cary Plantation, Hammond  
33 Plantation, Hodgdon, Houlton, Linneas, Littleton,  
34 Ludlow, New Limerick and Monticello; and

1           G. District 7: All remaining municipalities and  
2           townships in the State not included in Districts  
3           1 to 6.

4           4. Potatoes. "Potatoes" means and includes all  
5           potatoes, whether graded or ungraded, including all  
6           potatoes sold for processing into food, but does not  
7           include potatoes sold for processing into starch, un-  
8           less the potatoes are sold under a federal diversion  
9           program and paid for as grade potatoes.

10           5. Processing grower. "Processing grower" means  
11           any grower of potatoes destined for sale to a proces-  
12           sor.

13           6. Processor. "Processor" means any person, def-  
14           ined as a processor under Title 7, section 1012, who  
15           is licensed as a processor under Title 7, section  
16           1015.

17           7. Seed grower. "Seed grower" means any grower  
18           of potatoes destined for sale as seed.

19           8. Shipment. "Shipment" shall be deemed to take  
20           place when potatoes are located within the State in a  
21           car, boat, truck or other conveyance in which pota-  
22           atoes are to be transported.

23           9. Shipper. "Shipper" means any person engaged  
24           in the business of any of the following:

25           A. Agent or broker, by selling or distributing  
26           potatoes in commerce for or on behalf of growers  
27           or others, or by negotiating sales of potatoes in  
28           commerce for or on behalf of the seller or the  
29           purchaser, respectively;

30           B. Dealer;

31           C. Processor;

32           D. Grower, only when selling potatoes to anyone  
33           other than the parties set forth in paragraph A,  
34           B or C.

35           10. Tablestock grower. "Tablestock grower"  
36           means any grower of potatoes destined for fresh mar-  
37           ket sale.

1       §4603. Maine Potato Board

2           1. Establishment. The Maine Potato Board, as  
3 established by Title 5, section 12004, subsection 9,  
4 is within the Department of Agriculture, Food and Ru-  
5 ral Resources. The board shall consist of 11 members  
6 who, following the transition period provided for in  
7 subsection 11, shall be elected in accordance with  
8 the procedures set forth in this chapter and such ad-  
9 ditional procedures as the board may prescribe by  
10 rulemaking. Subject to such staggered terms as the  
11 board may provide by rule, board members shall serve  
12 2-year terms, provided that a board member may con-  
13 tinue to serve until a successor is duly elected and  
14 qualified and that board members may not serve more  
15 than 3 consecutive terms.

16           2. Assemblies. Persons directly involved in the  
17 Maine potato industry shall be entitled to partici-  
18 pate as members of an assembly as follows.

19           A. There shall be 7 assemblies of tablestock  
20 growers, one for each district. Subject to para-  
21 graph F, all tablestock growers in any district  
22 shall be entitled to membership in that dis-  
23 trict's tablestock growers' assembly.

24           B. There shall be 7 assemblies of seed growers,  
25 one for each district. Subject to paragraph F,  
26 all seed growers in any district shall be enti-  
27 tled to membership in that district's seed grow-  
28 ers' assembly.

29           C. There shall be 7 assemblies of processing  
30 growers, one for each district. Subject to para-  
31 graph F, all processing growers in any district  
32 shall be entitled to membership in that dis-  
33 trict's processing growers' assembly.

34           D. There shall be one assembly of dealers state-  
35 wide. Subject to paragraph F, all dealers shall  
36 be entitled to membership in this assembly.

37           E. There shall be one assembly of processors  
38 statewide. Subject to paragraph F, all proces-  
39 sors shall be entitled to membership in this as-  
40 sembly.

1 F. Notwithstanding paragraphs A to E, no person,  
2 firm or corporation may be a member of more than  
3 one assembly. Any person, firm or corporation  
4 which qualifies for membership in an assembly  
5 shall annually declare, in accordance with proce-  
6 dures prescribed by the board, the assembly in  
7 which membership is sought.

8 3. Election of assembly executive councils.  
9 Pursuant to nomination and election procedures  
10 adopted by the board and under the supervision of the  
11 board, assemblies shall elect executive councils to  
12 serve as liaisons between the board and the respec-  
13 tive assemblies and to carry out such other functions  
14 as the board may prescribe.

15 A. The executive council for the tablestock  
16 growers shall consist of 7 members, one elected  
17 by the tablestock growers' assembly for each dis-  
18 trict.

19 B. The executive council for the seed growers  
20 shall consist of 7 members, one elected by the  
21 seed growers' assembly for each district.

22 C. The executive council for the processing  
23 growers shall consist of 7 members, one elected  
24 by the processing growers' assembly for each dis-  
25 trict.

26 D. The executive council for the dealers shall  
27 consist of 7 members elected by the dealers' as-  
28 sembly.

29 E. The executive council for the processors  
30 shall consist of 5 members elected by the proces-  
31 sors' assembly.

32 4. Terms of executive council membership. Once  
33 elected, executive council members shall serve for 2  
34 years, provided that the members may continue to  
35 serve until a successor is duly elected and qualified  
36 and that executive council members may not serve more  
37 than 3 consecutive terms.

38 5. Meetings of executive councils and assem-  
39 blies. Executive councils shall annually elect offi-

1       cers, including a chairman, vice-chairman and secre-  
2       tary. Each executive council shall hold meetings  
3       from time to time, no less than 4 times a year, upon  
4       call of the executive council chairman, a majority of  
5       the executive council or upon call of the board.  
6       Each assembly shall hold meetings from time to time,  
7       no less than once a year, upon call of a majority of  
8       its executive council or upon call of the board, pro-  
9       vided that district assemblies of growers may hold  
10      these meetings jointly in statewide sessions or in  
11      concert with other assemblies or groups of assem-  
12      blies. All meetings of assemblies and executive  
13      councils shall be open to the public and otherwise in  
14      compliance with Title 1, chapter 13.

15           6. Election of the board. The board's members  
16      shall be selected from the executive councils as fol-  
17      lows.

18           A. Two members shall be elected by the executive  
19      council of the tablestock growers' assemblies,  
20      provided that no dealer may serve in this capaci-  
21      ty.

22           B. Two members shall be elected by the executive  
23      council of the seed growers' assemblies, provided  
24      that no dealer may serve in this capacity.

25           C. Two members shall be elected by the executive  
26      council of the processing growers' assemblies,  
27      provided that no dealer may serve in this capaci-  
28      ty.

29           D. Three members shall be elected by the execu-  
30      tive council of the dealers' assembly, provided  
31      that at least one dealer member must also be a  
32      potato grower.

33           E. Two members shall be elected by the executive  
34      council of the processors' assembly.

35      In the event of the permanent disqualification or  
36      resignation of a board member, the executive council  
37      responsible for electing that member shall elect a  
38      replacement for the balance of the term remaining.



1           7. Board officers and committees. The board  
2 shall annually elect officers, including a president,  
3 vice-president, secretary and treasurer and such oth-  
4 er officers as it deems necessary. The board may ap-  
5 point committees from its membership and assign to  
6 each committee such tasks as it deems appropriate,  
7 subject to the regular oversight of the entire board.

8           8. Board meetings. A regular annual meeting of  
9 the board shall be held on a date determined by the  
10 board. Other meetings, which shall be at least  
11 monthly, with the exception of the months of May and  
12 September, shall be held upon call of the chairman or  
13 of a majority of the board or by vote of the board.  
14 A majority of the board's members shall constitute a  
15 quorum at any board meeting. The vote of a majority  
16 of board members present shall constitute the act of  
17 the board at a meeting where a quorum is present.  
18 All board meetings shall be open to the public and  
19 shall be in compliance with Title 1, chapter 13, ex-  
20 cept as otherwise provided in this chapter.

21           9. Staff. The board shall appoint an executive  
22 director who shall be the board's chief administra-  
23 tive officer and who shall serve at the pleasure of  
24 the board. The executive director shall employ such  
25 additional staff as the board directs and the staff  
26 shall serve at the pleasure of the executive direc-  
27 tor. No staff of the board is subject to the Person-  
28 nel Law. The salary paid to the executive director  
29 and other staff of the board shall be fixed by the  
30 board, subject to the approval of the Governor. The  
31 board may delegate to its staff the power to execute  
32 the board's policies and programs, subject to regular  
33 oversight of the board.

34           10. Compensation. Board members and members of  
35 executive councils may be reimbursed for travel ex-  
36 penses necessary to their official business in ac-  
37 cordance with state procedures. Board members shall  
38 also receive a per diem allotment for attendance at  
39 board meetings as provided in Title 5, chapter 379.

40           11. Transition. Assemblies shall first elect  
41 their respective executive councils not later than  
42 January 31, 1987. Executive councils shall first  
43 elect their respective members of the board not later

1 than March 15, 1987. The duly elected board shall  
2 hold its first meeting not later than April 15, 1987.  
3 Until the first meeting of the elected board, a tran-  
4 sitional board shall be constituted, having all of  
5 the powers and duties of the board, in order to un-  
6 dertake the operations of the board following the ef-  
7 fective date of this chapter. A principal duty of  
8 the transitional board shall be to prepare procedures  
9 for and to oversee the initial meetings of assemblies  
10 and the initial elections of executive councils and  
11 the board. The transitional board shall be composed  
12 of 8 voting members, with 2 members each appointed by  
13 the boards of the Maine Potato Commission, the Maine  
14 Potato Council, the Maine Potato Sales Association  
15 and the Agricultural Bargaining Council. It is the  
16 intent of the Legislature that the transitional  
17 board, to the extent practicable, shall be composed  
18 of those persons who currently comprise the member-  
19 ship of the committee making recommendations to the  
20 Legislature for reform of the organization of the po-  
21 tato industry pursuant to Public Law 1983, chapter  
22 766.

23 To effect a smooth transition of functions following  
24 the effective date of this chapter, the transitional  
25 board may make money available to the Maine Potato  
26 Commission and the Maine Potato Council in order to  
27 allow them to complete the work undertaken previously  
28 with potato tax revenues and to transfer to the board  
29 such ongoing activities as the board deems appropri-  
30 ate, provided that the transition shall be completed  
31 no later than April 15, 1987, and that, except as ex-  
32 pressly otherwise directed by the board, all money,  
33 accounts, assets and other property held by the Maine  
34 Potato Commission and not previously transferred to  
35 the board shall automatically be transferred to and  
36 controlled by the board as of April 15, 1987.

37 §4604. Powers and duties of the Maine Potato Board

38 In furtherance of the purposes of this chapter,  
39 the board shall have the following powers and duties.

40 1. Rules and bylaws. The board may, in accord-  
41 ance with the Maine Administrative Procedure Act, Ti-  
42 tle 5, chapter 375, adopt rules and bylaws to govern  
43 its functions and those of the assemblies and execu-  
44 tive councils provided for in this chapter.

1           2. Programs. The board may make studies, under-  
2 take research, marketing and promotional programs,  
3 publish and disseminate information and implement  
4 other programs as are in furtherance of its legisla-  
5 tive purposes, provided that programs undertaken by  
6 the board shall be designed to benefit the Maine po-  
7 tato industry at large or segments of the industry,  
8 but shall not be designed to benefit exclusively any  
9 one person or entity involved in the industry.

10           3. Contracts. The board may, subject to laws  
11 and procedures generally applicable to state agen-  
12 cies, enter into contracts and agreements with pri-  
13 vate and public entities which the board finds are in  
14 furtherance of its legislative purposes. The con-  
15 tracts and agreements may include, without limita-  
16 tion, those relating to the lease or purchase of of-  
17 fice space, facilities, property, equipment and sup-  
18 plies as the board deems necessary for its purposes.  
19 The board may delegate to its executive director the  
20 power to enter into the contracts and agreements,  
21 subject to the board's oversight.

22           4. Funding; accounts. In addition to the money  
23 received by the board pursuant to section 4606, the  
24 board may receive and expend funds from any source,  
25 public or private, which it deems necessary to carry  
26 out its legislative purposes. All money received  
27 from any source shall be placed in a nonlapsing, sep-  
28 arate account or accounts, to be expended for the  
29 purposes.

30           5. Books and records; confidentiality. The  
31 board shall keep books, records and accounts of all  
32 its activities, which shall be open to inspection and  
33 audit by the State at all times. The State Auditor  
34 shall conduct an annual audit of the financial  
35 records of the board and shall report the results of  
36 the audit to the board, the Commissioner of Agricul-  
37 ture, Food and Rural Resources, the Treasurer of  
38 State and the Legislature. All books and records of  
39 the board shall be open to public inspection in ac-  
40 cordance with Title 1, chapter 13, provided that  
41 records and meetings of the board may by vote be  
42 closed to the public where public disclosure of the  
43 subject matter of the records or meetings would ad-  
44 versely affect the competitive position of the Maine  
45 potato industry or segments of the industry.

1           6. Assemblies and executive councils. The board  
2 shall oversee, communicate with and coordinate the  
3 work of assemblies and their executive councils. The  
4 board may make money available to enable the assem-  
5 blies and executive councils to undertake functions  
6 in furtherance of this chapter, subject to the  
7 board's supervision.

8           §4605. Potato tax

9           1. Rate. A tax is levied and imposed at the  
10 rate of \$.05 per hundredweight on all potatoes grown  
11 in this State, provided that no tax may be imposed on  
12 any potatoes which are retained by the grower to be  
13 used by him for seed purposes or for home consumption  
14 and provided further that no tax may be imposed on  
15 any potatoes received by a processor which are certi-  
16 fied as unmerchantable by a federal state inspector.

17           2. Tax as additional. Any tax imposed and col-  
18 lected under this chapter shall be in addition to any  
19 other taxes imposed or collected under any other law  
20 of the State now or hereafter in force.

21           3. Due date. The tax shall be due upon any par-  
22 ticular lot or quantity of potatoes as provided under  
23 subsection 6.

24           4. Application; certificate. Every shipper of  
25 potatoes shall file an application with the State Tax  
26 Assessor, on forms prescribed and furnished by him,  
27 which shall contain the name or names under which the  
28 shipper is transacting business within the State, the  
29 place or places of business and location or locations  
30 of loading and shipping places and agents of the  
31 shipper, the names and addresses of the several per-  
32 sons constituting a firm or partnership of the ship-  
33 per and, if a corporation, the corporate name and the  
34 names and addresses of its principal officers and  
35 agents within the State. Upon receipt of a complete  
36 and valid application, the State Tax Assessor will  
37 issue a certificate to the shipper. No person may  
38 act as a shipper until that certificate is issued to  
39 him. The certificate shall not be deemed a license  
40 within the meaning of that term in the Maine Adminis-  
41 trative Procedure Act, Title 5, chapter 375.

1        5. Tax deducted from selling price. A shipper  
2 who purchases, ships, receives, processes, handles or  
3 sells potatoes grown by another and pays, or becomes  
4 liable to pay, the tax imposed under this section  
5 shall charge and collect from the person from whom  
6 the potatoes were acquired an amount equal to 1/2 the  
7 rate of tax imposed under subsection 1, to be de-  
8 ducted or otherwise collected from the purchase price  
9 for all potatoes subject to the tax which are pur-  
10 chased, shipped, received, processed, handled or sold  
11 by the shipper.

12        6. Records and reports. Every shipper shall, on  
13 or before the 15th day of each month, report to the  
14 State Tax Assessor the quantity of potatoes received,  
15 sold or shipped by him during the preceding calendar  
16 month and any additional information which the State  
17 Tax Assessor deems pertinent, on forms furnished by  
18 the State Tax Assessor. At the time of filing the  
19 report, each shipper shall pay to the State Tax As-  
20 essor a tax at the rate of \$.05 per hundredweight  
21 upon all potatoes reported as purchased, sold or  
22 shipped, subject to subsection 1.

23        7. Inspections. The State Tax Assessor or his  
24 duly authorized agent may enter any place of business  
25 of any shipper or any car, boat, truck or other con-  
26 veyance in which potatoes are to be transported and  
27 to inspect books and records of any shipper for the  
28 purpose of determining what potatoes are taxable un-  
29 der this chapter and for the purpose of verifying any  
30 statement or return made by any shipper. The State  
31 Tax Assessor may delegate all or part of that author-  
32 ity to agents of the board or of the Commissioner of  
33 Agriculture, Food and Rural Resources.

34        §4606. Appropriations of money received

35        Money received by the Treasurer of State under  
36 this chapter, including all receipts of taxes levied  
37 under section 4605, shall be appropriated and used  
38 for the following purposes:

39        1. Collection and enforcement. For the collec-  
40 tion of the tax provided for in this chapter and the  
41 enforcement of this chapter; and

1           2. Board's activities. For all activities of  
2 the board authorized under this chapter.

3           Sec. 15. **Effective date.** This Act shall take  
4 effect on August 1, 1986, except that sections 4, 5  
5 and 6 shall take effect on April 15, 1987.

6   STATEMENT OF FACT

7           The Second Regular Session of the 111th Legisla-  
8 ture enacted a law increasing the Maine Potato Tax  
9 and mandating that Maine potato industry organiza-  
10 tions submit to the Second Regular Session of the  
11 112th Legislature a bill proposing the reorganization  
12 and restructure of the Maine potato industry. The  
13 purpose of this bill is to comply with that legisla-  
14 tive mandate and so to create a new organizational  
15 structure which will provide new leadership for all  
16 portions of the Maine potato industry.

17           This bill proposes the creation of the Maine Po-  
18 tato Board, a unified potato industry organization  
19 that will provide direction for the industry in poli-  
20 cy development, promotion, research and other activi-  
21 ties to strengthen the Maine potato industry. The  
22 new board, which replaces the current Maine Potato  
23 Commission and a number of other industry groups,  
24 will be closely aligned with State Government, will  
25 function under the Maine Administrative Procedure  
26 Act, Title 5, chapter 375, and will use Maine potato  
27 tax revenues to secure the future of the industry.

1           The Maine Potato Board will be comprised of rep-  
2   representatives of all potato producer groups, dealers  
3   and processors, each elected by representative assem-  
4   blies, so as to create a unified, industry-wide body  
5   directly elected and supported by the potato industry  
6   community.

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