

MAINE STATE LEGISLATURE

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(EMERGENCY)
(New Draft of H.P. 21, L.D. 21)
(New Title)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1711

H.P. 1253 House of Representatives, June 1, 1987
Reported by Representative MITCHELL from the Committee on
Marine Resources and printed under Joint Rule 2.
EDWIN H. PERT, Clerk
Original bill sponsored by Representative VOSE of
Eastport.

STATE OF MAINE

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

AN ACT to Amend the Sardine Tax.

1
2

3 **Emergency preamble.** Whereas, Acts of the Legis-
4 lature do not become effective until 90 days after
5 adjournment unless enacted as emergencies; and

6 Whereas, the 8-month sardine packing season be-
7 gins in June and the financial and administrative
8 changes should be in effect as the season commences
9 and be consistent throughout the season; and

10 Whereas, in the judgment of the Legislature,
11 these facts create an emergency within the meaning of
12 the Constitution of Maine and require the following
13 legislation as immediately necessary for the preser-

1 vation of the public peace, health and safety; now,
2 therefore,

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

5 Sec. 1. 32 MRSA §4151, sub-§§5 and 6 are enacted
6 to read:

7 5. Kippers. "Kippers" means all filets packed
8 in hermetically sealed containers which are not clas-
9 sified as sardines, but have herring as their predom-
10 inant contents.

11 6. Steaks. "Steaks" means all laterally cut
12 portions packed in hermetically sealed containers
13 which are not classified as sardines, but have
14 herring as their predominant contents.

15 Sec. 2. 32 MRSA §4155, as amended by PL 1979, c.
16 62, §2, is further amended to read:

17 §4155. Inspection; conformity with federal acts;
18 branding; embargo and condemnation

19 The Commissioner of Agriculture shall by adequate
20 inspection, by such methods, including sampling pro-
21 cedures, and at such times including before, during
22 and after packing, as he may from time to time deem
23 appropriate, see that sardines are packed in conform-
24 ity with the requirements of the Federal Food and
25 Drug Act, the laws of this State, including this
26 chapter, and the rules and regulations promulgated or
27 established thereunder by the commissioner, ~~and shall~~
28 ~~determine--the--grade--or--quality--of--each--lot--of~~
29 ~~sardines--for--which--he--shall--have--established--grades~~
30 ~~under--section--4157.~~ He shall, in a manner consistent
31 with the Maine Administrative Procedure Act, make
32 uniform rules and regulations, which shall have the
33 effect of law, for carrying out this chapter and for
34 insuring that sardines are packed in a sanitary envi-
35 ronment and manner and for the sanitary storage and
36 conditions of packing media, ~~and may fix standards of~~
37 ~~quality--in--addition--to--standards--fixed--by--law.~~ He
38 shall authorize the persons packing sardines in con-
39 formity with the requirements of this chapter to mark
40 the container of said sardines with a statement cer-

1 tifying that the food contained therein was packed,
2 inspected and passed under Title 22, sections 2151 to
3 2166. Any sardines falsely marked shall be deemed to
4 be misbranded, and any person, firm, corporation, as-
5 sociation or society who shall misbrand or falsely
6 mark any container of sardines or sell or offer for
7 sale such misbranded containers shall be punished by
8 a fine of not more than \$500 for each container thus
9 falsely marked.

10 Every holder of a license issued under section
11 4153 shall, before packing sardines in 1/4 size cans,
12 or in other containers for which grades shall have
13 been established by the ~~commissioner under section~~
14 ~~4157~~ Maine Sardine Council under Title 36, section
15 4701, have on file with the commissioner a code plan
16 satisfactory to the commissioner, which plan shall
17 show the plant where packed, lot and the calendar
18 year of packing, and may at the option of the licens-
19 ee show such other information as is desired. Option-
20 al coding information may, but need not be included
21 in the plan filed. The code plan shall define "lot"
22 as not more than the entire output of one packing
23 plant for one day, or for one personnel shift, which-
24 ever is the shorter period of time. Said plan shall
25 remain effective until modified or rescinded by said
26 licensee and another approved code plan is filed. No
27 such licensee shall pack, process, manufacture, sell,
28 ship, deliver, consign or have in his possession
29 sardines for which a code plan is required unless
30 said code appears legibly and permanently upon each
31 container and also upon the shipping case containing
32 said sardines.

33 The commissioner may issue a certificate for each
34 lot of sardines, as defined in the applicable code
35 plan on file with him, stating the fact of his in-
36 spection, the date of inspection, the code, the num-
37 ber of containers in the lot, the number of cans in-
38 spected, ~~and the quality or grade of said lot,~~ which
39 said certificate shall be prima facie evidence of the
40 facts therein stated. Certificates shall be issued
41 only to those packers who make written request to the
42 commissioner, which requests must state that the ap-
43 plicant applies for certificates for the entire sea-
44 sonal output of the year in which the application is
45 made, or for the entire output of the balance of such

1 season if the application is made after the season
2 has begun, and such application shall include all
3 plants operated by the individual, corporation or
4 company making the application.

5 The commissioner shall employ subordinate inspec-
6 tors, sufficient in numbers, so that adequate inspec-
7 tion can be performed. It shall be the duty of said
8 inspectors to make adequate and uniform and impartial
9 inspection of all the places, shops and factories in
10 the State, wherever sardines are packed for sale, and
11 for this purpose such inspectors shall have free ac-
12 cess, ingress and egress at all reasonable hours to
13 any sardine packing plant, may open any case or con-
14 tainer and may, upon tendering the market price, take
15 samples therefrom.

16 Whenever the commissioner or any duly authorized
17 agent of the commissioner has reasonable cause to be-
18 lieve that sardines, kippers or steaks are packed in
19 violation of any of the provisions of this chapter,
20 or regulations promulgated under authority of this
21 chapter or Title 36, section 4701, or that the fin-
22 ished product does not meet the standards and re-
23 quirements of such chapter and regulations, the com-
24 missioner or any duly authorized agent of the commis-
25 sioner may detain or place an embargo upon such
26 sardines by marking or tagging the same, giving no-
27 tice that such sardines were packed in violation of
28 this chapter and that they have been detained or
29 embargoed, and warning all persons not to remove or
30 dispose of the same by sale or otherwise until per-
31 mission for removal or disposal is given by the com-
32 missioner or the court. It shall be unlawful for any
33 person to remove or dispose of such detained or
34 embargoed article by sale or otherwise without such
35 permission. Orders for detention or embargo issued
36 under this section shall not be considered to be li-
37 censing or an adjudicatory proceeding, as those terms
38 are defined by the Maine Administrative Procedure
39 Act.

40 The commissioner or duly authorized agent of the
41 commissioner detaining such sardines shall promptly
42 petition the proper officer of the District Court or
43 the Superior Court within whose jurisdiction the
44 sardines are detained for a libel for condemnation of

1 such sardines, the procedure of which shall conform,
2 as nearly as may be, to the procedure for libelling
3 intoxicating liquors.

4 If the court finds that the sardines were packed
5 in violation of this chapter, or regulations issued
6 thereunder, it shall enter a decree that they shall
7 be destroyed at the expense of the claimant thereof,
8 under supervision of the commissioner, or any of his
9 duly authorized agents, and all court costs and fees,
10 and storage and other proper expenses shall be taxed
11 against the claimant. When the sardines can be
12 brought into conformity with this chapter by proper
13 labelling or by other process, the court, after such
14 costs, fees and expenses have been paid, and a bond
15 to the commissioner or his successors in office, in
16 such sum as the court may direct, with good and suf-
17 ficient sureties, conditioned that such sardines
18 shall be so labelled or processed, has been approved
19 by the court, may order that such sardines be deliv-
20 ered to the claimant thereof for such labelling or
21 processing under the supervision of the commissioner
22 or any duly authorized agent of the commissioner. The
23 expense of such supervision shall be paid by the
24 claimant. When the product is not in conflict with
25 the laws of a foreign country to which it is intended
26 for export, and is labelled on the outside of the
27 shipping package to show that it is intended for ex-
28 port, the court, after the costs, fees and expenses
29 have been paid, and a bond to the commissioner or his
30 successors in office in such sum not less than twice
31 the value of such goods as the court may direct with
32 good and sufficient sureties, conditioned that such
33 fish shall be exported to a foreign country, to be
34 named therein, with whose laws such fish are not in
35 violation and shall not be reimported into the United
36 States by any person whomsoever, may order such fish
37 to be redelivered to the claimant for export under
38 the supervision of the commissioner or any of his du-
39 ly authorized agents.

40 Sec. 3. 32 MRSa §4156, as amended by PL 1983, c.
41 85, §1, is further amended to read:

42 §4156. Fees; disposition

1 Each packer shall pay monthly, not later than the
2 10th day of each month, 8¢ per case on the amount of
3 sardines packed during the previous month, toward the
4 cost of maintaining the inspection provided for in
5 section 4155 and as a part of the fee for obtaining
6 and retaining his license. The inspection fee pro-
7 vided for may be increased by the Commissioner of Ag-
8 riculture, Food and Rural Resources, in a manner con-
9 sistent with the rule-making provisions of the Maine
10 Administrative Procedure Act, after consultation with
11 the Maine Sardine Council to an amount not to exceed
12 ~~20¢~~ 15¢ per case, in the event the fee of 8¢ per case
13 is not adequate to cover the cost of the inspection,
14 but the increased fee shall be reasonable ~~and shall~~
15 ~~cover as nearly as may be possible the cost of the~~
16 inspection. All license fees and all money received
17 under this chapter by the commissioner shall be paid
18 by him to the Treasurer of State and the same are
19 hereby appropriated for carrying out this chapter,
20 and for no other purpose.

21 ~~All products packed in hermetically sealed con-~~
22 ~~tainers which are not classified as sardines, but~~
23 ~~have herring as their predominant contents~~ Kippers
24 and steaks are assessed at an amount not to exceed
25 $\frac{2}{3}$ of the fee for products classified as sardines
26 with payment being made and disposal of the funds
27 handled in the same manner and for the same purposes
28 as set forth in the first paragraph.

29 Sec. 4. 32 MRSA §4157, sub-§3, as enacted by PL
30 1979, c. 62, §4, is repealed.

31 Sec. 5. 32 MRSA §4157, sub-§4, as enacted by PL
32 1979, c. 62, §4, is amended to read:

33 4. Labeling. Fish packed in accordance with this
34 section and the regulations promulgated under Title
35 36, section 4701, may be plainly and conspicuously
36 marked "Maine Sardines." Fish which are packed in a
37 manner inconsistent with this section and the regula-
38 tions under Title 36, section 4701, shall not be sold
39 for consumption in the United States unless each can
40 and case is plainly and conspicuously marked with the
41 word "herring," and the word "sardine" does not ap-
42 pear.

1 **Sec. 6.** 32 MRSA §4157, sub-§5, as enacted by PL
2 1979, c. 62, §4, is repealed.

3 **Sec. 7.** 32 MRSA §4157, sub-§6, as enacted by PL
4 1979, c. 62, §4, is amended to read:

5 6. Embargo. The commissioner, or any duly autho-
6 rized agent of the commissioner, shall detain or
7 place an embargo upon sardines officially designated
8 as substandard grade as established by the Maine
9 Sardine Council under Title 36, section 4701, for
10 which a certificate is issued, by marking or tagging
11 the same and warning all persons not to remove or
12 dispose of the same by sale or otherwise until per-
13 mission for removal or disposal is given by the com-
14 missioner. These sardines shall be detained or placed
15 under embargo until the goods are marked in accord-
16 ance with this section or the commissioner has re-
17 ceived a bond covering the export provisions of this
18 section. Orders for detention or embargo issued under
19 this section shall not be considered to be licensing
20 or an adjudicatory proceeding, as those terms are de-
21 fined by Title 5, Part 18.

22 **Sec. 8.** 32 MRSA §4157-A, first ¶, as enacted by
23 PL 1965, §332, sub-§3, is amended to read:

24 Sardines which are packed specifically for export
25 from the United States shall be exempt from section
26 4157 and Title 36, section 4701 provided they satisfy
27 the Maine Food Law.

28 **Sec. 9.** 36 MRSA §4695, 2nd ¶, as amended by PL
29 1981, c. 614, §1, is further amended to read:

30 An excise tax of 30¢ 35¢ per case, as defined in
31 section 4692, subsections 1 to 3, is levied and im-
32 posed upon the privilege of packing sardines.

33 **Sec. 10.** 36 MRSA §4697, as amended by PL 1983,
34 c. 85, §2, is further amended to read:

35 §4697. Reports of production and payment of tax

36 Every packer shall, on or before the 10th day of
37 each month, report to the State Tax Assessor the
38 quantity of sardines packed by him during the preced-

1 ing calendar month, on forms furnished by the State
2 Tax Assessor, and pay to the State Tax Assessor the
3 tax of ~~30¢~~ 35¢ per case on all sardines reported as
4 packed. If the State Tax Assessor determines that
5 overpayment of tax has been made, he shall make a re-
6 fund. In making additional assessment or refund de-
7 terminations, the State Tax Assessor shall rely on
8 the records of the Department of Agriculture, Food
9 and Rural Resources concerning the quantity of
10 sardines packed in each sardine plant, for sale and
11 suitable for human consumption. Any packer may pay
12 to the State Tax Assessor in advance a sum of money
13 based on an estimate of his tax for a given number of
14 months, and this sum shall be a credit against future
15 monthly reports of that packer.

16 Sec. 11. 36 MRSA §4699, sub-§2, ¶C, as repealed
17 and replaced by PL 1979, c. 26, §6, is amended to
18 read:

19 C. For gathering, studying, classifying and dis-
20 tributing information and data concerning quality,
21 grades, standards, methods of packing and
22 character of the manufactured sardine products,
23 in order to determine and improve their quality
24 and aid in merchandising and advertising them un-
25 der the direction of the Maine Sardine Council.
26 The information and data and the services of the
27 personnel who collect and classify it may be made
28 available to the Commissioner of Agriculture for
29 ~~use--in--promulgating,--establishing--and--modifying~~
30 ~~official--grades--for--sardines--and--for--use--in--as-~~
31 ~~signing--and--determining--grades--of--sardines--and~~
32 ~~in, Food and Rural Resources enforcing applicable~~
33 provisions of the law.

34 Sec. 12. 36 MRSA §4701 is enacted to read:

35 §4701. Regulations

36 1. Grades. The Maine Sardine Council may, in a
37 manner consistent with Title 5, Part 18, and after
38 public hearings, promulgate regulations establishing
39 official grades for sardines packed within the State,
40 and for the marking, branding or labeling of sardines
41 and the use of the grades. The hearings shall be
42 held in places reasonably convenient for the packers.

1 Notice of the hearings and of the final action shall
2 be sent, by registered mail, to all license holders
3 under Title 32, section 4153.

4 A. The grades may specify the number of fish per
5 container, the amount, quality and nature of the
6 packing medium or fill, the quality, appearance,
7 odor, character, taste and texture of the fish
8 packed, the style of pack, their workmanship and
9 arrangement in the container, the quality fo the
10 substances contained in the container, the size
11 and type of the container, and tolerances allow-
12 ing for reasonable variation from grades.

13 B. In establishing the regulations, the Maine
14 Sardine Council may consider packing practices in
15 Maine and in other jurisdictions, consumer ex-
16 pectancy, habits and desires, the types of fish
17 available, conditions of anitation, tastes and
18 preferences of varying parts of the consumer pub-
19 lic, marketing practices and market experience.

20 2. Substandard grade. Sardines which are offi-
21 cially designated as substandard grade, for which a
22 certificate is issued, shall not be sold for consump-
23 tion in the United States unless each can in the lot
24 has the words "Substandard Grade, Good Food-Not High
25 Quality" so placed as to be easily seen when the name
26 of the product or pictorial representation thereof is
27 viewed and appear conspicuously enough to be seen un-
28 der ordinary conditions of purchase. The words "Sub-
29 standard Grade, Good Food-Not High Quality" shall be
30 printed in 2 lines across the cover of all cans in
31 letters not less than 1/8 of an inch in height and be
32 enclosed in lines which are not less than 1/32 of an
33 inch in width. This wording shall be printed on all
34 wrappers, labels, cartons or other outer coverings of
35 the cans with a permanent type of indelible ink, or
36 by means of other approved procedure. The words
37 "Substandard Grade" shall appear in letters not less
38 than one inch in height on both ends of the shipping
39 container.

40 Sec. 13. Appropriation. The following funds are
41 appropriated from the General Fund to carry out the
42 purposes of this Act.

1		<u>1987-88</u>	<u>1988-89</u>
2	<u>AGRICULTURE, FOOD AND RURAL</u>		
3	<u>RESOURCES, DEPARTMENT OF</u>		
4	Bureau of Public Services		
5	Positions	(2)	(2)
6	Personal Services	\$90,500	\$90,500
7	All Other	9,500	9,500
8	Total	<u>\$100,000</u>	<u>\$100,000</u>

9 This appropriation pro-
10 vides funds for 2 food
11 inspector supervisors,
12 3 seasonal sardine in-
13 spectors and travel ex-
14 penses for the sardine
15 inspection program.

16 **Sec. 14. Allocations.** The following funds are
17 allocated from other special revenue to carry out the
18 purposes of this Act.

19		<u>1987-88</u>	<u>1988-89</u>
20	<u>AGRICULTURE, FOOD AND RURAL</u>		
21	<u>RESOURCES, DEPARTMENT OF</u>		
22	Bureau of Public Services		
23	Positions	(-2)	(-2)
24	Personal Services	(\$90,500)	(\$90,500)
25	All Other	(9,500)	(9,500)
26	Total	<u>(\$100,000)</u>	<u>(\$100,000)</u>

27 This deallocation will
28 assist in the proposed
29 General Fund cost shar-
30 ing of the sardine in-
31 spection program.

32	Bureau of Public Services		
33	Positions	(-2)	(-2)
34	Personal Services	(\$50,000)	(\$50,000)

1 This deallocation will
2 assist in the transfer
3 of the grading program
4 from the Department of
5 Agriculture, Food and
6 Rural Resources to the
7 Maine Sardine Council.

8 MAINE SARDINE COUNCIL

9	Positions	(2)	(2)
10	Personal Services	\$50,000	\$50,000

11 This allocation pro-
12 vides funds for a
13 Sardine Quality Grader
14 Supervisor and a
15 Sardine Quality Grader
16 II to establish grades
17 for sardines, steaks
18 and kippers.

19 **Emergency clause.** In view of the emergency cited
20 in the preamble, this Act shall take effect when ap-
21 proved.

22 FISCAL NOTE

23 This new draft will result in a loss of dedicated
24 revenue to the Department of Agriculture, Food and
25 Rural Resources of approximately (\$25,300) annually.
26 This estimate is based on the proposed reduction of
27 the inspection tax on sardines, kippers and steaks.
28 In addition, this new draft will generate an increase
29 in dedicated revenues to the Maine Sardine Council in
30 the amount of \$50,000 a year. This additional reve-
31 nue will be derived from a proposed increase in the
32 sardine excise tax and is intended to fund personnel
33 within the Maine Sardine Council to implement the
34 current grading program.

1 STATEMENT OF FACT

2 Currently, the sardine industry pays for its own
3 inspection costs and is stringently monitored by the
4 Department of Agriculture, Food and Rural Resources.
5 The sardine industry pays an inspection tax of be-
6 tween 8¢ and 20¢ per case of sardines and 5¢ to 13¢
7 per case of kippers and steaks to fund this program.
8 They also are subject to a sardine excise tax of 30¢
9 per case to fund the activities of the Maine Sardine
10 Council. The Maine Sardine Council proposes to
11 change the sardine inspection program in 3 basic
12 ways.

13 1. The Maine Sardine Council will cost share the
14 inspection program between the sardine industry and
15 the General Fund. The sardine inspection tax would
16 be reduced from the current level of 15¢ to 20¢ per
17 case rate to 8¢ to 15¢ per case.

18 2. The Maine Sardine Council will take over from
19 the Department of Agriculture, Food and Rural Re-
20 sources, the grading program for sardines, steaks and
21 kippers. The Department of Agriculture, Food and Ru-
22 ral Resources will retain its authority to embargo
23 goods.

24 3. The sardine excise tax will increase by 5¢
25 per case to a total of 35¢ per case to fund personnel
26 within the Maine Sardine Council to implement the
27 grading program.

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