

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

2
4
6
8
10
12
14
16
18
20
22
24
26
28
30
32
34
36
38
40
42
44
46

STATE OF MAINE
HOUSE OF REPRESENTATIVES
115TH LEGISLATURE
FIRST REGULAR SESSION

HOUSE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to H.P. 810,
L.D. 1172, Bill, "An Act to Establish a Fund to Promote Lobster
Marketing"

Amend the amendment by striking out everything after the
title and inserting in its place the following:

'Amend the bill by striking out everything after the
enacting clause and before the statement of fact and inserting in
its place the following:

'Sec. 1. 5 MRSA §12004-H, sub-§14 is enacted to read:

<u>14. Lobster</u>	<u>\$55 Per Diem</u>	<u>12 MRSA §6455</u>
<u>Promotion Council</u>	<u>Plus Expenses</u>	

Sec. 2. 12 MRSA c. 619, sub-c. III-A is enacted to read:

SUBCHAPTER III-A

LOBSTER PROMOTION COUNCIL

§6455. Lobster Promotion Council

1. Council established; purpose. The Lobster Promotion Council, established in Title 5, section 12004-H, subsection 14 and referred to in this subchapter as the "council," is created to promote and market actively Maine lobsters in state, regional, national and international markets. The council shall draw upon the expertise of the Maine lobster industry and established private marketing firms to identify market areas that will provide the greatest return on the investments made by lobster license holders and undertake those media or promotional efforts that represent the most cost-effective use of a limited promotional budget. The council shall remain responsive to the

2 Maine lobster industry, conduct its business in a public manner
3 and undertake marketing efforts that promote the quality and full
4 utilization of the product and the unique character of the
5 coastal Maine lobster fishery.

6 The council consists of 9 voting members appointed as follows:

8 A. From the western district of the State, consisting of
9 lands located between the Piscataqua River and the Kennebec
10 River, 3 members meeting the qualifications in subsection 2;

12 B. From the midcoast district of the State, consisting of
13 all lands located between the Kennebec River and the
14 Penobscot River, 3 members meeting the qualifications in
15 subsection 2; and

16 C. From the eastern district of the State, consisting of
17 all lands located between the Penobscot River and the St.
18 Croix River, 3 members meeting the qualifications in
19 subsection 2.

22 The commissioner shall appoint the members of the council from
23 among a list of nominees prepared by the Lobster Advisory
24 Council. The commissioner shall appoint one member within each
25 district for an initial term of one year, one member within each
26 district for an initial term of 2 years and one member within
27 each district for an initial term of 3 years. All subsequent
28 members are appointed by the commissioner for terms of 3 years.
29 A person may not serve more than 2 consecutive 3-year terms as a
30 member of the council. By majority vote, the council shall
31 annually elect a chair from among its members. The commissioner
32 is an ex officio, nonvoting member of the council.

34 2. Qualifications of members. From each district, 3
35 members must be appointed who meet the following criteria:

36 A. One person who is a full-time harvester and who has held
37 a valid lobster and crab fishing license for at least 5
38 consecutive years;

39 B. One person who is a dealer or pound operator and who:

41 (1) Has held a valid wholesale shellfish license or
42 lobster transport license for a period of at least 5
43 consecutive years; or

44 (2) Is the manager of, or an officer in, a business
45 entity operating in the State that holds a valid
46 wholesale shellfish license or lobster transport
47 license; and

2 C. One person who is a public member.

4 A person is eligible for appointment to the council from a
6 district only if that person is a resident of the district or if
 that person's place of business is located within the district.

8 Except for representation of specific interests required by
10 subsection 2, members of the council are governed by the
 provisions concerning conflict of interest under Title 5, section
12 18.

14 3. Meetings. The council shall meet at least quarterly. A
 quorum of 5 members is required to conduct the business of the
16 council. Additional meetings may be called by the chair. If 3
 or more members of the council submit to the chair a written
18 request for a meeting, the chair shall call a meeting to be held
 no sooner than 14 days after receipt of the written request. The
20 commissioner may remove any member with unexcused absences from 2
 or more consecutive meetings of the council. Administrative
22 procedures of the council must be in accordance with the Maine
 Administrative Procedure Act. All meetings and records of the
24 council are subject to Title 1, chapter 13, subchapter I, except
 that, by majority vote, the council may designate market studies
26 or promotional plans developed or funded by the council as
 confidential. The commissioner and those members of the
28 Legislature appointed to serve on the joint standing committee of
 the Legislature having jurisdiction over marine resource matters
30 shall have access to all material designated confidential by the
 council.

32 4. Powers and duties. The council may:

34 A. Undertake promotional marketing programs in cooperation
 with the lobster industry;

36 B. Promote national and international markets for lobsters
38 harvested or processed in the State;

40 C. Provide material and technical assistance to persons
 seeking to market lobsters harvested or processed in the
42 State;

44 D. Conduct other efforts as determined necessary to
 increase the sales of lobsters harvested or processed in the
46 State; and

48 E. Make expenditures from the Lobster Marketing Fund to
 carry out the purposes of this subchapter. Money in the
50 fund may be used only for the following purposes:

2 (1) Promotion, advertising and marketing development.
3 The council may implement programs and activities to
4 promote, advertise and develop markets for lobster and
5 make or enter into contracts with any local, state,
6 federal or private agency, department, firm,
7 corporation, entity or person for those purposes. At
8 least 50% of the money expended from the fund annually
9 must be expended for the purposes set forth in this
10 subparagraph; and

11 (2) The hiring of staff, payment of per diem and
12 reimbursement of expenses for members pursuant to Title
13 5, section 12004-H and payment of administrative and
14 overhead costs associated with the business of the
15 council. Any person hired by the council is a state
16 employee, subject to the personnel laws of the State;
17 and

18 F. Accept and deposit in the fund additional funding from
19 any source, public or private.

20 5. Fund established; license surcharge assessed. The
21 Lobster Promotion Fund, referred to in this subchapter as the
22 "fund," is established in the department to carry out the
23 purposes of this subchapter. The council shall administer the
24 fund and the department shall transfer to the fund all money
25 appropriated or received by the department for the purposes of
26 this subchapter. The fund is capitalized from the following
27 annual surcharges assessed on the following licenses issued by
28 the department for calendar years 1992 and 1993:

29 A. Class I crab and lobster licenses for persons under 18
30 years of age, \$25;

31 B. Class I crab and lobster licenses for persons 18 years
32 of age or older, \$50;

33 C. Class II crab and lobster licenses, \$100;

34 D. Class III crab and lobster licenses, \$150;

35 E. Wholesale seafood licenses with lobster permits, \$150;
36 and

37 F. Lobster transportation licenses, \$150.

38 A person holding more than one of the licenses listed in this
39 subsection is assessed a surcharge only on the highest
40 surchargeable license held.

2 The Treasurer of State shall hold all surcharges assessed by this
3 subsection in the fund and invest all money in the fund until
4 disbursement is authorized by the council. Interest from
5 investments accrues to the fund.

6
7 All money in the fund is subject to allocation by the
8 Legislature. Unexpended balances in the fund at the end of the
9 fiscal year may not lapse but must be carried forward to be used
10 for the same purposes.

11
12 6. Report. By February 15th of each year, the council
13 shall report to the joint standing committees of the Legislature
14 having jurisdiction over financial affairs and marine resource
15 matters on the programs undertaken pursuant to this subchapter,
16 expenditures from the fund and balances in all accounts in the
17 fund.

18
19 **Sec. 3. 12 MRSA §6851, as amended by PL 1989, c. 348, §§8 and**
20 **9 is further amended to read:**

21 **§6851. Wholesale seafood license; wholesale seafood license with**
22 **lobster permit**

23
24
25 **1. License required. It shall be is unlawful for any person**
26 **to engage in the activities authorized by this license under this**
27 **section without a current wholesale seafood license or other**
28 **license issued under this Part authorizing the activities.**

29
30 **2. License activities. The holder of a wholesale seafood**
31 **license may, in the wholesale or retail trade:**

32
33 **A. Within or beyond the state limits, buy, sell, process,**
34 **ship or transport any marine species or their parts, except**
35 **lobsters;**

36
37 **B. Within or beyond the state limits, buy, sell, shuck,**
38 **pack, ship, or, within the state limits, transport fresh or**
39 **frozen shellfish, except lobsters, to the extent these**
40 **activities are expressly authorized by a shellfish**
41 **certificate issued under section 6856; or**

42
43 **~~C. Buy, sell, process, ship or, within the state limits,~~**
44 **~~transport lobster and properly permitted or lawfully~~**
45 **~~imported lobster meat or parts. This license shall not~~**
46 **~~authorize removing lobster meat from the shell unless a~~**
47 **~~permit under section 6857 is held, or~~**

48
49 **D. Buy, sell, process, ship or, within the state limits,**
50 **transport crayfish.**

2 **2-A. Wholesale seafood license with lobster permit.** At the
3 request of the applicant, the commissioner shall issue a
4 wholesale seafood license with a lobster permit. A person
5 holding a wholesale seafood license with a lobster permit may
6 engage in all the activities in subsection 2 and may buy, sell,
7 process, ship or transport lobster or properly permitted or
8 lawfully imported lobster meat or parts anywhere within the state
9 limits. A license under this subsection does not authorize a
10 person to remove lobster meat from the shell unless a permit
11 under section 6857 is held.

12 **3. Exceptions.** This section shall does not apply to smoked
13 herring or alewives.

14 **4. License limited.** A license shall under this section only
15 authorize--these authorizes activities at one establishment or
16 with one vehicle, but not on a vessel rigged to fish, provided,
17 that this license shall also authorize authorizes the sale and
18 transportation of scallops from any vessel.

19 **5. Supplemental license.** A supplemental license shall must
20 be obtained for each additional establishment or vehicle.

21 **6. Fees.** The fees shall be are as follows:

22 A. \$130 for the wholesale seafood license or a wholesale
23 seafood license with a lobster permit; and

24 B. \$26 for each supplemental license.

25 **Sec. 4. Initial matters; appointments and report.** The
26 Commissioner of Marine Resources shall appoint all the initial
27 members of the Lobster Promotion Council no later than 60 days
28 after the effective date of this Act. In its 1992 annual report
29 to the Legislature, the council shall present a lobster marketing
30 plan. The plan must include the council's projected 2-year
31 budget and a full and detailed discussion of the market strategy
32 to be pursued by the council.

33 **Sec. 5. Legislation.** Subsequent to receipt and review of the
34 1992 annual report submitted by the Lobster Promotion Council
35 pursuant to the Maine Revised Statutes, Title 12, section 6455,
36 subsection 6, the Joint Standing Committee on Marine Resources
37 may report out a bill to the Second Regular Session of the 115th
38 Legislature regarding the Lobster Promotion Council.

39 **Sec. 6. Working capital advance.** The State Controller is
40 authorized to advance \$100,000 from General Fund unappropriated
41 surplus to the Lobster Promotion Fund established in the Maine
42

Revised Statutes, Title 12, section 6455, subsection 5. These funds must be used to provide the working capital advance necessary for the Lobster Promotion Council to undertake its statutory duties under Title 12, chapter 619, subchapter III-A. The Lobster Promotion Council shall return all funds advanced for this purpose to the General Fund no later than June 30, 1992.

Sec. 7. Limitations; expenditures and financial commitments.

Notwithstanding the Maine Revised Statutes, Title 12, section 6455 or section 10 of this Act, the Lobster Promotion Council may not expend or obligate by contract more than \$100,000 from the Lobster Promotion Fund prior to March 1, 1992.

Sec. 8. Alternative funding mechanism; report.

The Commissioner of Marine Resources shall investigate a method of funding the activities of the Lobster Promotion Council that is based upon a fee assessed on each pound of lobster sold by lobster dealers in the State. In conducting the investigation, the commissioner shall determine the most equitable method of assessing such a fee, the minimum fee necessary to maintain a funding level consistent with that generated by license surcharges assessed in the Maine Revised Statutes, Title 12, section 6455 and the costs of the most efficient method of administering and enforcing such a funding mechanism. The commissioner shall report the results of that investigation to the Joint Standing Committee on Marine Resources by February 15, 1992.

Sec. 9. Staff; hiring and qualifications.

The Lobster Promotion Council shall hire a part-time executive director and a full-time clerk typist II within a reasonable time after completion of the initial appointment of all members. The executive director is a confidential employee and serves at the pleasure of the council. The executive director is entitled to compensation at pay range 26, step A, must be experienced in public sector budgeting and financial management and knowledgeable in state budgeting, procurement and administrative procedures.

Sec. 10. Allocation.

The following funds are allocated from the Lobster Promotion Fund to carry out the purposes of this Act.

	1991-92	1992-93
LOBSTER PROMOTION COUNCIL		
Lobster Promotion Fund		
Positions	(1.5)	(1.5)
Personal Services	\$32,426	\$46,975

HOUSE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to H.P. 818, L.D.
1172

2	All Other	307,599	421,725
	Capital Expenditures	25,000	
4	Provides the Lobster		
6	Promotion Council with funds		
8	for a part-time Executive		
10	Director, a full-time Clerk		
12	Typist II, per diem and		
14	expenses for the Lobster		
16	Promotion Council,		
	contractual services for the		
	promotion and marketing of		
	lobsters, computer equipment,		
	a vehicle and general		
	operating expenses.		
18	LOBSTER PROMOTION COUNCIL		
	TOTAL	<u>\$365,025</u>	<u>\$468,700</u>

20 **FISCAL NOTE**

22
24 This bill establishes a Lobster Promotion Fund to be
26 administered by a proposed independent Lobster Promotion
28 Council. This fund will derive dedicated revenue of \$468,700
30 annually beginning in fiscal year 1991-92 from annual surcharges
32 assessed crab and lobster licenses, wholesale seafood licenses
and lobster transportation licenses. The 9-member Lobster
Promotion Council will require allocations of \$365,025 in fiscal
year 1991-92 and \$468,700 in fiscal year 1992-93 for a part-time
executive director, a clerk typist II and other anticipated
expenses to promote lobsters and report annually to the
Legislature on its activities.

34
36 This bill includes authorization for a working capital
38 advance of \$100,000 from the General Fund unappropriated surplus
40 and a limitation on financial commitments by contract of \$100,000
prior to March 1, 1992. The working capital advance will reduce
General Fund revenue from interest earnings by an amount that can
not be determined at this time.

42 Costs associated with the Department of Marine Resources
44 investigating alternative funding mechanisms for the Lobster
46 Promotion Council and reporting to the Joint Standing Committee
on Marine Resources by February 15, 1992 will be absorbed by the
department using existing budgeted resources.''

2 STATEMENT OF FACT

4 This amendment strikes the committee amendment and the
6 bill. The amendment establishes a Lobster Promotion Council of 9
8 voting members to promote the marketing of lobsters and develop
10 national and international markets for lobsters harvested or
12 processed in the State. A Lobster Promotion Fund is established
14 that is capitalized through surcharges assessed on crab and
16 lobster licenses, wholesale seafood licenses and lobster
18 transportation licenses issued by the Department of Marine
20 Resources for calendar years 1992 and 1993. The Lobster
22 Promotion Fund may be used by the Lobster Promotion Council only
24 for the lobster marketing and promotion activities authorized by
26 this amendment. Two staff positions funded from the Lobster
28 Promotion Fund are authorized in this amendment. The State
30 Controller is authorized to make a \$100,000 working capital
32 advance to the council. A working capital advance is required
34 for the council to begin conducting its business, since revenue
36 from surcharges assessed on calendar year 1992 licenses will not
begin flowing into the Lobster Promotion Fund until after January
1, 1992. Any working capital funds advanced by the State
Controller must be returned to the General Fund prior to the end
of the fiscal year. This amendment requires the council to
report annually to the Joint Standing Committee on Marine
Resources and the Joint Standing Committee on Appropriations and
Financial Affairs on its activities and on the use of the funds.

38 In addition, the Commissioner of Marine Resources is
required to investigate options other than license surcharges as
funding mechanisms for the Lobster Promotion Council. The
commissioner is specifically charged with investigating a funding
mechanism based upon fees assessed on each pound of lobster sold
by dealers. The commissioner must report the findings of the
investigation to the Joint Standing Committee on Marine Resources
by February 15, 1992.

Filed by Rep. Mitchell of Freeport
Reproduced and distributed under the direction of the Clerk of the
House
(6/5/91) (Filing No. H-572)