

MAINE STATE LEGISLATURE

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

HOUSE AMENDMENT "C" to COMMITTEE AMENDMENT "A" to H.P. 818,
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 title
and before the statement of fact and inserting in its place the
following:

'Emergency preamble. Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

Whereas, the marketing and promotion of lobsters is
essential to maintain a healthy lobster industry; and

Whereas, the development of a lobster marketing and
promotion plan must begin immediately; and

Whereas, in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
safety; now, therefore,

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

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

The council consists of 9 voting members appointed as follows:

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

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

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

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

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

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

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

14 (1) Has held a valid wholesale shellfish license or
16 lobster transport license for a period of at least 5
18 consecutive years; or

20 (2) Is the manager of, or an officer in, a business
22 entity operating in the State that holds a valid
24 wholesale shellfish license or lobster transport
26 license; and

28 C. One person who is a public member.

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

36 Except for representation of specific interests required by
38 subsection 2, members of the council are governed by the
40 provisions concerning conflict of interest under Title 5, section
42 18.

44 3. Meetings. The council shall meet at least quarterly. A
46 quorum of 5 members is required to conduct the business of the
48 council. Additional meetings may be called by the chair. If 3
50 or more members of the council submit to the chair a written
 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
 commissioner may remove any member with unexcused absences from 2
 or more consecutive meetings of the council. Administrative
 procedures of the council must be in accordance with the Maine
 Administrative Procedure Act. All meetings and records of the
 council are subject to Title 1, chapter 13, subchapter I, except
 that, by majority vote, the council may designate market studies
 or promotional plans developed or funded by the council as
 confidential. The commissioner and those members of the
 Legislature appointed to serve on the joint standing committee of
 the Legislature having jurisdiction over marine resource matters
 shall have access to all material designated confidential by the
 council.

4. Powers and duties. The council may:

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

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

6 C. Provide material and technical assistance to persons
8 seeking to market lobsters harvested or processed in the
10 State;

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

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

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

28 (2) The hiring of staff, payment of per diem and
30 reimbursement of expenses for members pursuant to Title
32 5, section 12004-H and payment of administrative and
34 overhead costs associated with the business of the
council. Any person hired by the council is a state
employee, subject to the personnel laws of the State;
and

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

40 5. Fund established; license surcharge assessed. The
42 Lobster Promotion Fund, referred to in this subchapter as the
"fund," is established in the department to carry out the
44 purposes of this subchapter. The council shall administer the
fund and the department shall transfer to the fund all money
46 appropriated or received by the department for the purposes of
this subchapter. The fund is capitalized from the lobster
48 landing tax established in Title 36, chapter 720 and from
surcharges assessed on the following licenses issued by the
department for calender years 1992 and 1993:

50

2 A. Wholesale seafood licenses with lobster permits, \$150;
3 and

4 B. Lobster transportation licenses, \$150.

6 A person holding both of the licenses listed in this subsection
7 is assessed a surcharge only on the first license purchased. A
8 surcharge may not be assessed on supplemental licenses.

10 The Treasurer of State shall hold all surcharges assessed by this
11 subsection in the fund and invest all money in the fund until
12 disbursement is authorized by the council. Interest from
13 investments accrues to the fund.

16 All money in the fund is subject to allocation by the
17 Legislature. Unexpended balances in the fund at the end of the
18 fiscal year may not lapse but must be carried forward to be used
19 for the same purposes.

20 6. Report. By February 15th of each year, the council
21 shall report to the joint standing committees of the Legislature
22 having jurisdiction over financial affairs and marine resource
23 matters on the programs undertaken pursuant to this subchapter,
24 expenditures from the fund and balances in all accounts in the
25 fund.

28 Sec. 3. 12 MRSA §6851, as amended by PL 1989, c. 348, §§8 and
29 9 is further amended to read:

30 §6851. Wholesale seafood license; wholesale seafood license with
31 lobster permit

34 1. License required. It shall be unlawful for any person
35 to engage in the activities authorized by this license under this
36 section without a current wholesale seafood license or other
37 license issued under this Part authorizing the activities.

38 2. License activities. The holder of a wholesale seafood
39 license may, in the wholesale or retail trade:

42 A. Within or beyond the state limits, buy, sell, process,
43 ship or transport any marine species or their parts, except
44 lobsters;

46 B. Within or beyond the state limits, buy, sell, shuck,
47 pack, ship, or, within the state limits, transport fresh or
48 frozen shellfish, except lobsters, to the extent these
49 activities are expressly authorized by a shellfish
50 certificate issued under section 6856; or

2 C. ~~Buy, sell, process, ship or, within the state limits,~~
transport ~~lobster and properly permitted or lawfully~~
4 ~~imported lobster meat or parts. This license shall not~~
authorize ~~removing lobster meat from the shell unless a~~
6 ~~permit under section 6857 is held, or~~

8 D. Buy, sell, process, ship or, within the state limits,
transport crayfish.

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

20 3. Exceptions. This section shall ~~does~~ not apply to smoked
22 herring or alewives.

24 4. License limited. A license shall ~~under this section~~ only
authorize ~~these~~ authorizes activities at one establishment or
26 with one vehicle, but not on a vessel rigged to fish, provided,
that this license shall ~~also authorize~~ authorizes the sale and
28 transportation of scallops from any vessel.

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

32 6. Fees. The fees shall ~~be~~ are as follows:

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

38 B. \$26 for each supplemental license.

40 Sec. 4. 36 MRSA, c. 720 is enacted to read:

42 CHAPTER 720

44 LOBSTER LANDING TAX

46 §4841. Definitions

48 As used in this chapter, unless the context otherwise
50 indicates, the following terms have the following meanings.

1. Lobster. "Lobster" means all or any portion of a crustacean of the genus *Homarus americanus*.

2. Lobster Promotion Fund. "Lobster Promotion Fund" means the Lobster Promotion Fund established under Title 12, section 6455, subsection 5.

3. Person. "Person" means any natural person or any business, firm, or corporation.

4. Wholesale seafood license with a lobster permit. "Wholesale seafood license with a lobster permit" means a wholesale seafood license with a lobster permit issued pursuant to Title 12, section 6851, subsection 2-A.

§4842. Lobster landing tax; statement and rate of tax

An excise tax of 2¢ per pound is imposed on the purchase or importation of lobsters by any person holding a wholesale seafood license with a lobster permit. A person holding a wholesale seafood license with a lobster permit shall pay to the State Tax Assessor a tax of 2¢ on each pound of lobster purchased or imported by that person that has not previously been subject to taxation under this chapter.

1. Schedule. A person holding a wholesale seafood license with a lobster permit shall:

A. By April 1st of each year, submit payment for taxes due on lobster purchased or imported between and including October 1st and December 31st of the previous year;

B. By July 1st of each year, submit payment for taxes due on lobster purchased or imported between and including January 1st and March 31st of that year;

C. By October 1st of each year, submit payment for taxes due on lobster purchased or imported between and including April 1st and June 30th of that year; and

D. By January 1st of each year, submit payment for taxes due on lobster purchased or imported between and including July 1st and September 30th of the previous year.

2. Report. Each payment submitted to the State Tax Assessor under subsection 1 must be accompanied by a report listing the total weight, in pounds, of lobsters purchased by that person in the State during the reporting period and the total weight, in pounds, of lobster imported by that person during the reporting period. The State Tax Assessor shall prescribe the form used to report this information.

2 **§4843. Disposition of fees.**

4 The State Tax Assessor shall deposit fees collected under
6 this chapter into the Lobster Promotion Fund.

8 **§4844. Civil violation**

10 A person holding a wholesale seafood license with a lobster
12 permit who purchases lobsters and does not file the statement or
14 pay the tax required under this chapter commits a civil violation
 for which a forfeiture not to exceed \$100 for the first violation
 and \$500 for each subsequent violation may be adjudged. Each
 lobster sold for which the tax is not paid is a separate
 violation.

16 **Sec. 5. Initial matters; appointments and report.** The
18 Commissioner of Marine Resources shall appoint all the initial
20 members of the Lobster Promotion Council no later than 60 days
22 after the effective date of this Act. In its 1992 annual report
24 to the Legislature, the council shall present a lobster marketing
 plan. The plan must include the council's projected 2-year
 budget and a full and detailed discussion of the market strategy
 to be pursued by the council.

26 **Sec. 6. Working capital advance.** The State Controller is
28 authorized to advance \$100,000 from General Fund unappropriated
30 surplus to the Lobster Promotion Fund established in the Maine
32 Revised Statutes, Title 12, section 6455, subsection 5. These
34 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.

36 **Sec. 7. Limitations; expenditures and financial commitments.**
38 Notwithstanding the Maine Revised Statutes, Title 12, section
40 6455 or section 10 of this Act, the Lobster Promotion Council may
 not expend or obligate by contract more than \$100,000 of its
 allocation from the Lobster Promotion Fund prior to March 1, 1992.

42 **Sec. 8. Staff; hiring and qualifications.** The Lobster Promotion
44 Council shall hire a part-time executive director and a full-time
46 clerk typist II within a reasonable time after completion of the
48 initial appointment of all members. The executive director is a
50 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 marketing and
 promotion, state budgeting, procurement and administrative
 procedures.

2 **Sec. 9. Allocation.** The following funds are allocated from the
Lobster Promotion Fund to carry out the purposes of this Act.

		1991-92	1992-93
4	LOBSTER PROMOTION COUNCIL		
6	Lobster Promotion Fund		
8			
10	Positions	(1.5)	(1.5)
10	Personal Services	\$43,489	\$46,975
12	All Other	348,425	390,999
12	Capital Expenditures	25,000	
14	Provides funds for a		
16	part-time Executive Director,		
16	a full-time Clerk Typist II,		
18	per diem and expenses for the		
18	Lobster Promotion Council,		
20	contractual services for the		
20	promotion and marketing of		
22	lobsters, computer equipment,		
22	a vehicle and general		
24	operating expenses.		
26	LOBSTER PROMOTION COUNCIL		
26	TOTAL	\$416,914	\$437,974
28	FINANCE, DEPARTMENT OF		
30	Bureau of Taxation		
32	Positions	(2.0)	(2.0)
34	Personal Services	\$54,100	\$56,850
34	All Other	18,650	10,876
36	Capital Expenditures	14,210	
38	Provides funds for a Revenue		
38	Agent position and one Clerk		
40	Typist III position, training		
40	expenses, rental of office		
42	space, postage and computer		
42	acquisitions to administer		
44	the lobster landing tax.		
46	DEPARTMENT OF FINANCE		
46	TOTAL	\$86,960	\$67,726
48	ALLOCATIONS TOTAL	\$503,874	\$505,700
50			

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

FISCAL NOTE

1991-92 1992-93
APPROPRIATIONS/ALLOCATIONS

Other Funds \$503,874 \$505,700

REVENUES

Other Funds \$540,350 \$540,350

This bill establishes a Lobster Promotion Fund to be administered by a proposed independent Lobster Promotion Council. This fund will derive dedicated revenue of \$540,350 annually from a 2¢ per pound tax on each pound of lobster purchased by wholesale seafood dealers and through surcharges assessed on wholesale seafood licenses with a lobster permit and lobster transportation licenses. A 9-member Lobster Promotion Council will require allocations of \$416,914 in fiscal year 1991-92 and \$437,974 in fiscal year 1992-93 for a part-time Executive Director, a Clerk Typist II, other anticipated expenses to promote lobsters and an annual report to the Legislature on its activities. There is an allocation to the Bureau of Taxation of \$86,960 for fiscal year 1991-92 and \$67,726 for fiscal year 1992-93 to provide funds for a Revenue Agent, a Clerk Typist III and general operating expenses to administer the proposed lobster landing tax.

This bill includes authorization for a working capital advance of \$100,000 from the General Fund unappropriated surplus 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.

The additional work load and administrative costs associated with a minimal number of new cases filed in District Court as a result of the violation will be absorbed within the budgeted resources of the Judicial Department. There will be a minor increase in General Fund revenue from the collection of additional fines.'

STATEMENT OF FACT

2

4 This amendment strikes the committee amendment and the bill
6 and makes the bill an emergency. The amendment establishes a
8 9-member Lobster Promotion Council to promote lobsters and to
10 develop national and international markets for lobsters harvested
12 or processed in the State. A Lobster Promotion Fund is
14 established that is capitalized from 2 revenue sources: a 2¢ per
16 pound tax on each pound of lobster purchased by wholesale seafood
18 dealers; and surcharges assessed on wholesale seafood licenses
20 issued with a lobster permit and lobster transportation licenses issued
22 by the Department of Marine Resources for calendar years 1992 and
1993. The Lobster Promotion Fund may be used by the Lobster
Promotion Council only for the lobster marketing and promotion
activities authorized by the amendment. The State Controller is
authorized to make a \$100,000 working capital advance to the
council. Any working capital funds advanced by the State
Controller must be returned to the General Fund prior to the end
of the fiscal year. The amendment requires the council to report
annually to both the Joint Standing Committee on Appropriations
and Financial Affairs and the Joint Standing Committee on Marine
Resources on its activities and on the use of the funds.

24 This amendment provides a necessary allocations section and
26 fiscal note.

Filed by Rep. Townsend of Eastport
Reproduced and distributed under the direction of the Clerk of the
House
(6/11/91) (Filing No. H-639)