

MAINE STATE LEGISLATURE

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STATE OF MAINE
SENATE
115TH LEGISLATURE
FIRST REGULAR SESSION

SENATE AMENDMENT "A " to H.P. 818, L.D. 1172, Bill, "An Act to Establish a Fund to Promote Lobster Marketing"

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:

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

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:

2 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;

4
6 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
8 subsection 2; and

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

14
16 The commissioner shall appoint the members of the council from
among a list of nominees prepared by the Lobster Advisory
18 Council. The commissioner shall appoint one member within each
district for an initial term of one year, one member within each
20 district for an initial term of 2 years and one member within
each district for an initial term of 3 years. All subsequent
22 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
24 member of the council. By majority vote, the council shall
annually elect a chair from among its members. The commissioner
26 is an ex officio, nonvoting member of the council.

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

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

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

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

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

44 C. One person who is a public member.

46
48 A person is eligible for appointment to the council from a
district only if that person is a resident of the district or if
that person's place of business is located within the district.

50
52 Except for representation of specific interests required by
subsection 2, members of the council are governed by the

provisions concerning conflict of interest under Title 5, section 18.

3. Meetings. The council shall meet at least quarterly. A quorum of 5 members is required to conduct the business of the council. Additional meetings may be called by the chair. If 3 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:

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

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

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

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

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

(1) Promotion, advertising and marketing development. The council may implement programs and activities to promote, advertise and develop markets for lobster and 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

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2 (2) The hiring of staff, payment of per diem and
3 reimbursement of expenses for members pursuant to Title
4 5, section 12004-H and payment of administrative and
5 overhead costs associated with the business of the
6 council. Any person hired by the council is a state
7 employee, subject to the personnel laws of the State;
8 and

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

11 5. Fund established; license surcharge assessed. The
12 Lobster Promotion Fund, referred to in this subchapter as the
13 "fund," is established in the department to carry out the
14 purposes of this subchapter. The council shall administer the
15 fund and the department shall transfer to the fund all money
16 appropriated or received by the department for the purposes of
17 this subchapter. The fund is capitalized from the following
18 annual surcharges assessed on the following licenses issued by
19 the department for calender years 1992 and 1993:

20 A. Class I crab and lobster licenses for persons 18 to 69
21 years of age, \$25;

22 B. Class II crab and lobster licenses, \$50;

23 C. Class III crab and lobster licenses, \$75;

24 D. Wholesale seafood licenses with lobster permits, \$200;
25 and

26 E. Lobster transportation licenses, \$200.

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

30 The Treasurer of State shall hold all surcharges assessed by this
31 subsection in the fund and invest all money in the fund until
32 disbursement is authorized by the council. Interest from
33 investments accrues to the fund.

34 All money in the fund is subject to allocation by the
35 Legislature. Unexpended balances in the fund at the end of the
36 fiscal year may not lapse but must be carried forward to be used
37 for the same purposes.

38 6. Report. By February 15th of each year, the council
39 shall report to the joint standing committees of the Legislature
40 having jurisdiction over financial affairs and marine resource
41 matters on the programs undertaken pursuant to this subchapter.

expenditures from the fund and balances in all accounts in the fund.

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

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

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

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

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

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

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

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

2-A. Wholesale seafood license with lobster permit. At the request of the applicant, the commissioner shall issue a wholesale seafood license with a lobster permit. A person holding a wholesale seafood license with a lobster permit may engage in all the activities in subsection 2 and may buy, sell, 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.

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

4. **License limited.** A license shall ~~under this section~~ only ~~authorize these~~ authorizes activities at one establishment or

2 with one vehicle, but not on a vessel rigged to fish, provided,
that this license shall also ~~authorize~~ authorizes the sale and
4 transportation of scallops from any vessel.

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

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

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

12 B. \$26 for each supplemental license.

14 **Sec. 4. Initial matters; appointments and report.** The
16 Commissioner of Marine Resources shall appoint all the initial
members of the Lobster Promotion Council no later than 60 days
18 after the effective date of this Act. In its 1992 annual report
to the Legislature, the council shall present a lobster marketing
20 plan. The plan must include the council's projected 2-year
budget, a full and detailed discussion of the market strategy to
22 be pursued by the council and a summary of issues or problems
arising from the implementation of the license surcharges.

24 **Sec. 5. Working capital advance.** The State Controller is
26 authorized to advance \$100,000 from General Fund unappropriated
surplus to the Lobster Promotion Fund established in the Maine
28 Revised Statutes, Title 12, section 6455, subsection 5. These
funds must be used to provide the working capital advance
30 necessary for the Lobster Promotion Council to undertake its
statutory duties under Title 12, chapter 619, subchapter III-A.
32 The Lobster Promotion Council shall return all funds advanced for
this purpose to the General Fund no later than June 30, 1992.

34 **Sec. 6. Limitations; expenditures and financial commitments.**
36 Notwithstanding the Maine Revised Statutes, Title 12, section
6455 or section 10 of this Act, the Lobster Promotion Council may
38 not expend or obligate by contract more than \$100,000 from the
Lobster Promotion Fund prior to March 1, 1992.

40 **Sec. 7. Alternative funding mechanism; report.** The Commissioner
42 of Marine Resources shall investigate a method of funding the
activities of the Lobster Promotion Council that is based upon a
44 fee assessed on each pound of lobster sold by lobster dealers in
the State. In conducting the investigation, the commissioner
46 shall determine the most equitable method of assessing such a
fee, the minimum fee necessary to maintain a funding level
48 consistent with that generated by license surcharges assessed in
the Maine Revised Statutes, Title 12, section 6455 and the costs
50 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. 8. 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. 9. 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
All Other	217,421	289,894
Capital Expenditures	25,000	
Provides funds for a part-time Executive Director, a full-time Clerk Typist II, per diem and expenses for the Lobster Promotion Council, contractual services for the promotion and marketing of lobsters, computer equipment, a vehicle and general operating expenses.		
LOBSTER PROMOTION COUNCIL TOTAL	\$274,847	\$336,869

FISCAL NOTE

	1991-92	1992-93
APPROPRIATIONS/ALLOCATIONS		
Other Funds	\$274,847	\$336,869

REVENUES

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Other Funds	\$336,869	\$336,869
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This bill establishes a Lobster Promotion Fund to be administered by a proposed independent Lobster Promotion Council. This fund will derive dedicated revenue of \$336,869 annually beginning in fiscal year 1991-92 from annual surcharges assessed on crab and lobster licenses, wholesale seafood licenses and lobster transportation licenses. The 9-member Lobster Promotion Council will require allocations of \$274,847 in fiscal year 1991-92 and \$336,869 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.

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.

Costs associated with the Department of Marine Resources investigating alternative funding mechanisms for the council and reporting to the Joint Standing Committee on Marine Resources by February 15, 1992 will be absorbed by the department utilizing existing budgeted resources.'

STATEMENT OF FACT

This amendment replaces the bill. The amendment establishes a Lobster Promotion Council of 9 voting members to promote the marketing of lobsters and develop national and international markets for lobsters harvested or processed in the State. A Lobster Promotion Fund is established that is capitalized through surcharges assessed on crab and lobster licenses, wholesale seafood licenses and lobster transportation licenses issued 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 this amendment. Two staff positions funded from the Lobster Promotion Fund are authorized in this amendment. The State Controller is authorized to make a \$100,000 working capital advance to the council. A working capital advance is required for the council to begin conducting its business, since revenue 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

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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.

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.

(Senator VOSE)
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COUNTY: Washington

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