

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)



116th MAINE LEGISLATURE

SECOND REGULAR SESSION-1994

Legislative Document

No. 1607

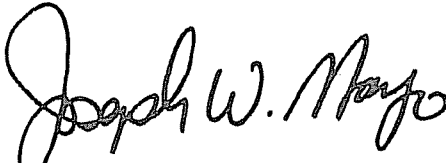
H.P. 1199

House of Representatives, January 3, 1994

An Act to Establish the Lobster Promotion Council as a Public Instrumentality.

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.
Received by the Clerk of the House on December 29, 1993. Referred to the Committee on Marine Resources and 1200 ordered printed pursuant to Joint Rule 14.


JOSEPH W. MAYO, Clerk

Presented by Representative MITCHELL of Freeport.

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

4
6 Whereas, the Lobster Promotion Council can more efficiently
and effectively perform its duties as a public instrumentality
than as a state agency; and

8
10 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
12 necessary for the preservation of the public peace, health and
safety; now, therefore,

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

16 **Sec. 1. 12 MRSA §6455, sub-§1-A** is enacted to read:

18 1-A. Council is a public instrumentality. The council is
20 established as a public instrumentality serving a public
purpose. As a public instrumentality:

22 A. Employees of the council may not be construed to be
24 state employees for any purpose, including the state civil
26 service provisions of Title 5, Part 2 and Title 5, chapter
Part 20;

28 B. The council may not be construed to be a state agency
30 for any purposes, including the budget, accounts and
32 control, auditing, purchasing or other provisions of Title
5, Part 4; and

34 C. Notwithstanding any provisions of paragraphs A and B:

36 (1) All meetings and records of the council are
38 subject to the provisions of Title 1, chapter 13,
40 subchapter I, except that, by majority vote of the
42 members, the council may designate market studies or
44 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 have access
to all material designated confidential by the council;

46 (2) Except as required by subsection 2, members of the
48 council are governed by the conflict of interest
50 provisions set forth in Title 5, section 18; and

2 (3) For the purposes of the Maine Tort Claims Act, the
3 council is a "governmental entity" and its employees
4 are "employees" as those terms are defined in Title 14,
5 section 8102.

6 **Sec. 2. 12 MRSA §6455, sub-§§2 and 3,** as enacted by PL 1991, c.
7 523, §2, are amended to read:

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

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

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

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

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

21 C. One person who is a public member.

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

25 ~~Except for representation of specific interests required by~~
26 ~~subsection 2, members of the council are governed by the~~
27 ~~provisions concerning conflict of interest under Title 5, section~~
28 ~~18.~~

29 **3. Meetings.** The council shall meet at least quarterly. A
30 quorum of 5 members is required to conduct the business of the
31 council. Additional meetings may be called by the chair. If 3
32 or more members of the council submit to the chair a written
33 request for a meeting, the chair shall call a meeting to be held
34 no sooner than 14 days after receipt of the written request. The
35 commissioner may remove any member with unexcused absences from 2
36 or more consecutive meetings of the council. Administrative
37 ~~procedures of the council must be in accordance with the Maine~~
38 ~~Administrative Procedure Act. All meetings and records of the~~
39 ~~council are subject to Title 1, chapter 13, subchapter I, except~~
40 ~~that, by majority vote, the council may designate market studies~~
41 ~~or promotional plans developed or funded by the council as~~

2 confidential. ~~The commissioner and those members of the~~
3 ~~Legislature appointed to serve on the joint standing committee of~~
4 ~~the Legislature having jurisdiction over marine resource matters~~
5 ~~shall have access to all material designated confidential by the~~
6 ~~council.~~

7 **Sec. 3. 12 MRSA §6455, sub-§3-A,** as enacted by PL 1993, c.
8 282, §1, is amended to read:

9 **3-A. Employees.** The council shall hire a full-time
10 executive director and may hire clerical staff as needed to
11 perform its duties. Employees of the Lobster Promotion Council
12 serve at the pleasure of the council. ~~Except as provided in this~~
13 ~~subsection, employees of the council are not state employees and~~
14 ~~are not subject to the provisions of Title 5, chapters 71 and 372~~
15 ~~or Title 5, Part 20.~~ The salary and benefits for employees of
16 the council are determined by the council. ~~For the purposes of~~
17 ~~the Maine Tort Claims Act, the council is a governmental entity~~
18 ~~and its employees are employees as these terms are defined in~~
19 ~~Title 14, section 8102.~~

20 **Sec. 4. 12 MRSA §6455, sub-§4, ¶E,** as amended by PL 1993, c.
21 282, §3, is further amended to read:

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

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

34 (2) The hiring of staff and the payment of
35 compensation for employees, payment of per diem and
36 reimbursement of expenses for members pursuant to Title
37 5, section 12004-H and payment of administrative and
38 overhead costs associated with the business of the
39 council; and

40 **Emergency clause.** In view of the emergency cited in the
41 preamble, this Act takes effect when approved.
42

2

STATEMENT OF FACT

4

6

8

10

12

14

16

18

20

This bill makes the Lobster Promotion Council a public instrumentality. As a public instrumentality, the council is no longer a state agency and its employees are not state employees for any purposes, including state civil service and retirement, state budgeting, accounts and controls, auditing and purchasing systems of the Department of Finance and Administration. The conflict of interest, freedom of access and tort claim provisions that previously applied to the council are retained.

This document has not yet been reviewed to determine the need for cross-reference, stylistic and other technical amendments to conform existing law to current drafting standards.