

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

SECOND REGULAR SESSION-1994

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H.P. 1386

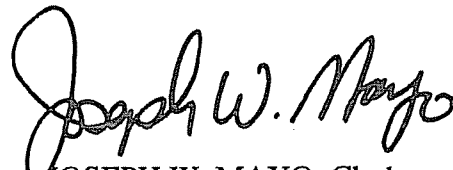
House of Representatives, February 15, 1994

An Act to Implement the Recommendations of the Maine Sardine Council.

(EMERGENCY)

Reported by Representative MITCHELL for the Maine Sardine Council pursuant to Public Law 1993, chapter 413, section 5.

Reference to the Joint Standing Committee on Marine Resources suggested and printing ordered under Joint Rule 20.


JOSEPH W. MAYO, Clerk

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

4
Whereas, the packing of sardines is one of the most
6 important industries of the State; and

8
Whereas, the Maine Sardine Council can more efficiently and
effectively perform its duties as a public instrumentality of the
10 State than as a state agency; and

12
Whereas, in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
14 Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
16 safety; now, therefore,

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

20 **Sec. 1. 3 MRSA §927, sub-§7, ¶B,** as amended by PL 1991, c.
376, §10, is further amended to read:

22 B. Independent agencies:

24 ~~(1) --Maine-Sardine-Council;~~

26 (2) Atlantic Sea Run Salmon Commission;

28 (3) Public Utilities Commission;

30 (4) Atlantic States Marine Fisheries Commission;

32 (5) Maine Development Foundation;

34 (6) Board of Directors, Maine Municipal and Rural
36 Electrification Cooperative Agency;

38 (7) Lobster Advisory Council;

40 (8) Board of Environmental Protection;

42 (9) Board of Underground Oil Storage Tank Installers;

44 (10) Telecommunications Relay Services Advisory
Council; and

46 (11) Public Advocate.

48 **Sec. 2. 5 MRSA §12004-H, sub-§8,** as amended by PL 1991, c.
50 446, Pt. C, §1, is repealed.

2 **Sec. 3. 10 MRSA §1701**, as amended by PL 1977, c. 694, §167,
is further amended to read:

4 **§1701. Trademarks**

6
8 In order to carry out better the objectives of the Maine
Sardine Tax Law, the Maine Sardine Council may, ~~by regulation~~
10 ~~adopted in a manner consistent with the Maine Administrative~~
12 ~~Procedure Act,~~ develop and register trademarks. The Commissioner
of Agriculture, Food and Rural Resources may delegate to the
14 Maine Sardine Council the authority to regulate the use of the
State of Maine trademark when used in the processing and sale of
Maine sardines.

16 **Sec. 4. 10 MRSA §1704**, as amended by PL 1977, c. 694, §169,
is further amended to read:

18 **§1704. Rules and regulations**

20 The Maine Sardine Council may prescribe, ~~in a manner~~
22 ~~consistent with the Maine Administrative Procedure Act,~~ rules and
24 regulations for carrying out the purposes of this chapter, and
may issue licenses to processors who request authority to use the
26 trademark and who shall abide by such rules and regulations. The
council may charge a fee on a case basis for the use of
28 trademarks established by the council or of the State of Maine
trademark used on canned sardines. The Administrative Court, upon
30 application of the commissioner, the Maine Sardine Council or the
Attorney General, shall have the right to cancel any license for
32 failure to abide by the rules and regulations prescribed by the
council; and the council shall have the right, after notice and
34 ~~rule-making provisions of the Maine Administrative Procedure Act,~~
opportunity for a hearing and ~~in a manner consistent with the~~
to cancel all outstanding licenses at any time that the council
36 deems such action necessary to the best interest of the sardine
industry as a whole.

38 **Sec. 5. 32 MRSA §4166, sub-§2-A**, as enacted by PL 1993, c. 14,
40 §2, is amended to read:

42 **2-A. Council.** "Council" means the Maine Sardine Council,
as established by Title 5 32, section ~~12004-H, subsection 8~~ 4167,
44 or any person authorized by the Maine Sardine Council to act on
its behalf.

46 **Sec. 6. 32 MRSA §4167, sub-§1**, as enacted by PL 1991, c. 446,
48 Pt. C, §3, is amended to read:

1. **Council established as an incorporated public instrumentality of the State.** The Effective July 1, 1994, the Maine Sardine Council, ~~as established by Title 5, section 12004-H, subsection 8,~~ referred to in this subchapter as the "council," is a body corporate and politic and an incorporated public instrumentality of the State and the exercise of powers conferred by this Part is held to be the performance of essential government functions. For the purposes of the budget, accounts and control, purchasing or other provisions of Title 5, Part 4 the council may not be construed to be a state agency. The council consists of not more than 9 nor fewer than 3 members to be appointed by the Commissioner of Marine Resources. Fifty-one percent of the members of the council constitutes a quorum and the affirmative vote of at least 51% of the members is necessary for the transaction of all business and the carrying out of the duties of the council. A quorum of council members may be determined through the use of proxy voting and telephone polls. The members must be sardine packers operating within the State who have been actively engaged in packing sardines, kippers or steaks for not less than 2 years and must remain so while in office. A person is considered to be actively engaged in packing sardines, kippers or steaks if that person has derived, during the period, a substantial portion of income from packing sardines, kippers or steaks or has been the director or manager of an entity that derives a substantial portion of its income from packing sardines, kippers or steaks.

28 **Sec. 7. 32 MRSA §4167, sub-§§4 to 6,** as enacted by PL 1991, c. 446, Pt. C, §3, are amended to read:

30 **4. Compensation.** The members of the council are entitled to compensation according to ~~the provisions of Title 5, chapter 379~~ such guidelines as the council may establish. Each council member's designated alternate is entitled to reimbursement for expenses incurred in the performance of that alternate's duties, but at no time may a regular council member and that member's designated alternate be reimbursed for expenses incurred for attendance at the same meeting.

40 **5. Executive director; staff.** The council, in concurrence with the Commissioner of Marine Resources, may select and employ and fix the salary of an executive director-advertising and merchandising manager to administer the advertising, merchandising, research and development program. The executive director, with the consent of the council, may engage, ~~subject to the Civil Service Law,~~ sufficient clerical personnel and other employees for the efficient performance of the executive director's duties. After July 1, 1994, employees of the council may not be considered state employees for any purpose, including the state civil service provisions of Title 5, Part 2 and Title

2 5, chapter 372. For the purposes of the Maine Tort Claims Act,
3 the council is a "governmental entity" and its employees are
4 "employees" as those terms are defined in Title 14, section 8102.

6 ~~6. Proceedings. Administrative proceedings of the council~~
7 ~~must be in accordance with the Maine Administrative Procedure~~
8 ~~Act. Meetings and records of the council are subject to Title 1,~~
9 ~~chapter 13, subchapter I, except that all~~ All council records
10 containing tax records filed in accordance with Title 36, section
11 4697, including individual plant pack data; quality control
12 information records compiled pursuant to section Title 36,
13 section 4699, subsection 2, paragraph C; and any other
14 proprietary information obtained from individual processing
15 plants, including information concerning packing technology, are
16 confidential.

18 **Sec. 8. 32 MRSA §4168, sub-§3,** as enacted by PL 1991, c. 446,
19 Pt. C, §3, is amended to read:

21 **3. Grades.** The council may adopt rules establishing
22 official grades for sardines, kippers and steaks packed within
23 the State, and for the marking, branding or labeling of sardines,
24 kippers and steaks and the use of the grades. ~~Prior to adopting~~
25 ~~rules under this section, the council shall hold public hearings~~
26 ~~in places reasonably convenient for the packers. Notice of the~~
27 ~~hearings and of the final action must be sent, by certified mail,~~
28 ~~to all license holders under section 4153. The council may use~~
29 ~~the seal of the State of Maine in support of all quality control~~
30 ~~and promotion activities.~~

31 A. The grades may specify the number of fish per container;
32 the amount, quality and nature of the packing medium or
33 fill; the quality, appearance, odor, character, taste and
34 texture of the fish packed; the style of pack, the quality
35 of the packing and arrangement in the container; the quality
36 of the substances contained in the container; the size and
37 type of the container; and tolerances allowing for
38 reasonable variation from grades.

39 B. When adopting rules under this section, the council may
40 consider packing practices in the State and in other
41 jurisdictions, consumer expectancy, habits and desires, the
42 types of fish available, conditions of sanitation, tastes
43 and preferences of varying parts of the consumer public,
44 marketing practices and market experience.

46 **Sec. 9. 36 MRSA §4692-A, sub-§2,** as enacted by PL 1991, c.
47 446, Pt. B, §3, is amended to read:

2 **2. Council.** "Council" means the Maine Sardine Council
3 established by Title 5 32, section 12004-H 4167,--subsecti~~on~~-8.

4 **Sec. 10. 36 MRSA §4699, first ¶**, as amended by PL 1991, c. 446,
5 Pt. B, §8, is further amended to read:

6 Money received under this chapter by the Treasurer of State
7 must be appropriated transferred to the Maine Sardine Council in
8 its capacity as an independent agency on a monthly basis and used
9 for the following purposes:

10 **Sec. 11. 36 MRSA §4699**, as amended by PL 1991, c. 446, Pt. B,
11 §8, is further amended by adding at the end a new paragraph to
12 read:

13 The Maine Sardine Council may receive and accept from any
14 source allocations, appropriations, loans, grants and
15 contributions of money or other things of value to be held, used
16 or applied to carry out this chapter, subject to the conditions
17 upon which those loans, grants and contributions are made,
18 including but not limited to, appropriations, allocations, loans,
19 grants or gifts from any state or federal agency.

20 **Sec. 12. Transition provisions.** The following provisions apply
21 to the Maine Sardine Council on July 1, 1994.

22 **1. Funds transferred.** All funds held by the Treasurer of
23 State pursuant to the Maine Revised Statutes, Title 36, section
24 4699 must be transferred to the Maine Sardine Council in its
25 capacity as an independent agency.

26 **2. Equipment and property transferred.** All equipment and
27 property of the Maine Sardine Council must be transferred to the
28 Maine Sardine Council in its capacity as an independent agency
29 and may be sold, transferred or disposed of as determined by the
30 Maine Sardine Council.

31 **3. Personnel transferred.** The Maine Sardine Council
32 employees must be transferred from state employment to the Maine
33 Sardine Council in its capacity as an independent agency. Fringe
34 benefits from state employment of the transferred personnel,
35 including vacation and sick leave, health and life insurance and
36 retirement, remain with the transferred personnel. Upon the
37 effective date of this Act, the employees of the council are
38 exempted from all furlough and shutdown days and 39-hour workweek
39 restrictions imposed by earlier budget acts of the Legislature.
40 After the transition on July 1, 1994, the council may elect to
41 become a participating local district for purposes of the Maine
42 State Retirement System and all employee benefit elections,
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2 including the option of retaining state employee health insurance
3 program benefits for transferred employees may be made by the
4 council. All employee benefit elections, including the retention
5 of state employee health insurance program benefits for
6 transferred employees, may be made by the council. The
7 Department of Administrative and Financial Services shall assist
8 the council and the executive director with the orderly
9 implementation of these provisions to be completed by July 1,
10 1994.

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

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16 **STATEMENT OF FACT**

17 This bill establishes the Maine Sardine Council as a public
18 instrumentality of the State on July 1, 1994. Upon passage, it
19 would immediately exempt Maine Sardine Council employees from all
20 furlough and shutdown days and the 39-hour workweek restrictions
21 imposed by earlier budget acts of the Legislature. Once the
22 council becomes a public instrumentality, its employees are no
23 longer state employees and the council is no longer considered a
24 state agency for the purposes of the budgeting, accounts and
25 control and purchasing systems of the Department of
26 Administrative and Financial Services. After July 1, 1994 the
27 Maine Sardine Council may elect to become a participating local
28 district so that retirement benefits under the Maine State
29 Retirement System are made available to its employees. Other
30 employee benefit elections, including the retention of state
31 employee health insurance program benefits for transferred
32 employees, will be made by the council. The bill also clarifies
33 that the council may use the seal of the State of Maine in
34 support of its quality control and promotional activities, allows
35 the council to utilize funds from sources other than the Maine
36 Sardine Tax and allows proxy and telephone voting to ensure a
37 quorum at council meetings.

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44 **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.**