

MAINE STATE LEGISLATURE

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STATE OF MAINE
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117th MAINE LEGISLATURE

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H.P. 1159

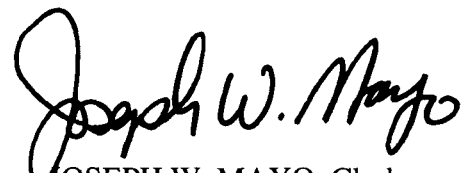
House of Representatives, November 29, 1995

An Act to Implement the Productivity Plan of the Department of Agriculture, Food and Rural Resources Relating to the Animal Welfare Board, the Maine Dairy Promotion Board and the Maine Dairy and Nutrition Council.

(EMERGENCY)

Reported by Representative KERR for the Joint Standing Committee on Appropriations and Financial Affairs pursuant to Joint Order H.P. 1156.

Reference to the Committee on Agriculture, Conservation and Forestry suggested and ordered printed.


JOSEPH W. MAYO, Clerk

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,** certain obligations and expenses will become due
and payable prior to July 1, 1996; and

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

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

16 **Sec. 1. 5 MRSA §12004-H, sub-§§3 and 4,** as amended by PL 1991,
c. 376, §26, are repealed.

18 **Sec. 2. 5 MRSA §12004-I, sub-§2-B,** as enacted by PL 1991, c.
20 779, §2, is repealed.

22 **Sec. 3. 5 MRSA §12004-I, sub-§6-E** is enacted to read:

24 <u>6-E.</u>	<u>Maine Dairy</u>	<u>Expenses</u>	<u>7 MRSA</u>
<u>Economic</u>	<u>Promotion</u>	<u>Only</u>	<u>\$2992</u>
26 <u>Development</u>	<u>Advisory Board</u>		

28 **Sec. 4. 5 MRSA 12004-I, sub-§7-C** is enacted to read:

30 <u>7-C.</u>	<u>Maine Dairy</u>	<u>Expenses</u>	<u>7 MRSA</u>
<u>Education</u>	<u>and Nutrition</u>	<u>Only</u>	<u>\$2998</u>
32	<u>Advisory</u>		
	<u>Council</u>		

34 **Sec. 5. 7 MRSA §1,** as amended by PL 1991, c. 837, Pt. A, §12,
36 is further amended to read:

38 **§1. Department of Agriculture, Food and Rural Resources**

40 The Department of Agriculture, Food and Rural Resources, is
established and is maintained for the improvement of agriculture
42 and the advancement of the interests of husbandry. The
Department of Agriculture, Food and Rural Resources is referred
44 to in this Title as the "department" and consists of the
Commissioner of Agriculture, Food and Rural Resources, in this
46 Title called the "commissioner," and the following: The Aroostook
Water and Soil Management Board, the Board of Pesticide Control,
48 ~~the Maine Dairy and Nutrition Council Committee, the Maine Dairy~~
~~Promotion Board,~~ the Maine Milk Commission, the Maine Potato
50 Board, the Seed Potato Board, ~~the State Soil and Water~~

2 ~~Conservation Commission~~, the Harness Racing Commission, and the
3 Board of Veterinary Medicine ~~and the Animal Welfare Board~~. The
4 commissioner is appointed by the Governor, subject to review by
5 the joint standing committee of the Legislature having
6 jurisdiction over agriculture matters and to confirmation by the
7 Legislature, and holds office during the pleasure of the
8 Governor. The commissioner is entitled to receive actual
9 expenses incurred in the performance of the commissioner's
10 official duties. The commissioner may employ such clerical labor
11 as may be required, subject to the Civil Service Law, and may
12 expend such sums for postage, telephone, telegraph and other
13 general office expenses as may be necessary in the performance of
14 the commissioner's duties, the same to be paid out of any money
appropriated by the Legislature for such purpose.

16 **Sec. 6. 7 MRSA §2, 3rd ¶**, as amended by PL 1989, c. 878, Pt.
17 B, §7, is further amended to read:

18
19 The commissioner does not have authority to exercise or
20 interfere with the exercise of any discretionary statutory
21 authority granted to the following, which authority is
22 exclusively within the specific board, bureau, agency,
23 commission, committee or other governmental unit: ~~The Maine Dairy
24 and Nutrition Council Committee, the Maine Dairy Promotion Board,~~
25 the Maine Milk Commission, the Seed Potato Board, the Harness
26 Racing Commission, the Maine Potato Board, ~~the Soil and Water
27 Conservation Commission~~, the Board of Veterinary Medicine and the
28 Board of Pesticide Control.

30 **Sec. 7. 7 MRSA §2991, sub-§1**, as enacted by PL 1991, c. 376,
31 §28, is repealed.

32 **Sec. 8. 7 MRSA §2991, sub-§4-A** is enacted to read:

34 **4-A. Department.** "Department" means the Department of
35 Agriculture, Food and Rural Resources.

36
37 **Sec. 9. 7 MRSA §2992**, as amended by PL 1993, c. 689, §1, is
38 further amended to read:

39 **§2992. Maine Dairy Promotion Advisory Board**

40
41 The Maine Dairy Promotion Advisory Board, as established by
42 Title 5, section ~~12004-H~~ 12004-I, subsection ~~3~~ 6-E, is within the
43 department. The board consists of ~~the following 5 members: the~~
44 ~~Commissioner of Agriculture, Feed and Rural Resources, or the~~
45 ~~commissioner's designee, who shall serve ex officio, and 4~~
46 ~~producers.~~

2 The ~~produceer~~ members must be appointed by the commissioner
on recommendation of the various producer associations,
4 individuals or unorganized groups of producers in the State. The
4 ~~produceer~~ members must include 2 producers selling milk on the
Maine market and 2 producers selling milk on the Boston market,
6 Federal Milk Marketing Order No. 1. ~~Produceer-members~~ Members
selling in the same market may not belong to the same
8 agricultural cooperative or sell their milk to the same dealer.

10 The first 4 members appointed to the board as reconstituted
in this section shall serve one-year, 2-year, 3-year and 4-year
12 terms respectively. The members appointed thereafter shall serve
4-year terms. A person may not be appointed to more than 2
14 consecutive 4-year terms. In case of a vacancy caused by death,
resignation or otherwise, the commissioner shall fill the vacancy
16 for the unexpired period of the term.

18 The appointed members are entitled to compensation according
to Title 5, chapter 379.

20 The members of the board shall elect a chair.

22 ~~The board shall appoint an executive director who is the
board's chief administrative officer and serves at the pleasure
24 of the board. The executive director shall employ, as the board
directs, additional staff who serve at the pleasure of the
26 executive director. The staff of the board is not subject to the
Civil Service Law. The salary paid to the executive director and
28 other staff of the board must be fixed by the board, subject to
the approval of the Governor. The board may delegate to its
30 staff the power to execute the board's policies and programs,
32 subject to the board's oversight.~~

34 **Sec. 10. 7 MRSA §2993**, as amended by PL 1993, c. 689, §2, is
further amended to read:

36

38 **§2993. Powers and duties**

38

40 ~~The board is created to~~ The department, in carrying out its
duties under this chapter, shall promote the prosperity and
42 welfare of this State and of the dairy industry of the State by
fostering promotional, educational, advertising and research
44 programs of the dairy industry. The ~~board~~ department has the
following powers and duties. The ~~board~~ department:

46 **1. Contracts and agreements.** May make or enter into
contracts or agreements with any local, state, federal or private
48 agency, department, firm, corporation or association for the
purposes defined in this chapter. The contracts or agreements
50 may include, without limitation, those relating to the lease or

2 purchase of office space, facilities, property, equipment and
supplies as the board department determines necessary for its
4 purposes. ~~The board may delegate to its executive director the
power to enter into the contracts or agreements, subject to the
board's oversight;~~

6 1-A. Staff. May employ a director and other temporary or
8 permanent employees as it may require;

10 **2. Cooperation with other agencies.** Shall cooperate with
12 other state or regional agencies with like purposes, including
transferring to those agencies any portion of its receipts that
14 it determines appropriate and in the best interests of the dairy
industry in the State. In determining those amounts, the board
16 department shall consider the relative benefits accruing to all
Maine producers from increased fluid milk consumption within the
18 Maine market and the New England market, Federal Milk Marketing
Order No. 1; the relative effectiveness of the various programs
20 intended to increase fluid milk consumption for which funding is
being considered; appropriate research needs; and other
22 considerations pertinent to the distribution of its funds to
other agencies for cooperative efforts;

24 ~~**3. Books and records.** Shall keep books, records and
accounts of all its activities, which must be open to inspection
26 and audit by the State at all times. The State Auditor shall
conduct an annual audit of the financial records of the board and
28 report the results of the audit to the board, the commissioner,
the Treasurer of State and the Legislature. All books and
30 records of the board must be open to public inspection in
accordance with Title 1, chapter 13, except that records and
32 meetings of the board may by vote be closed to the public when
public disclosure of the subject matter of the records or
34 meetings would adversely affect the competitive position of the
milk industry of the State or segments of that industry;~~

36 **4. Annual report.** Shall prepare an annual report that must
38 include a summary of all receipts and expenditures, including
expenditures for specific promotional or research programs; and a
40 description of the various promotional or research programs
operated, contracted or sponsored by the board; ~~and a directory
42 of current board members, including their affiliation and term of
office~~ department; and

44 **5. Outside funding.** May, in addition to the money received
46 by the board department pursuant to section 2994, receive and
expend funds from any source, public or private, that it
48 determines necessary to carry out its purposes. All money
received from any source must be placed in a nonlapsing, separate
50 account or accounts to be expended for those purposes.

2 **Sec. 11. 7 MRSA §2994, last ¶**, as enacted by PL 1991, c. 376,
§28, is amended to read:

4 The board department may cooperate with similar boards,
6 agencies and committees in other states and is authorized to pay
8 to a New England committee that part of its receipts it
determines is in the best interest of the dairy industry of the
State.

10 **Sec. 12. 7 MRSA c. 604-A** is amended by repealing the chapter
12 headnote and enacting the following in its place:

14 CHAPTER 604-A

16 MAINE DAIRY AND NUTRITION TAX

18 **Sec. 13. 7 MRSA §2998**, as enacted by PL 1993, c. 689, §3, is
amended to read:

20 **§2998. Maine Dairy and Nutrition Advisory Council**

22 The Maine Dairy and Nutrition Advisory Council, as
24 established by Title 5, section ~~12004-H, --subsection-4~~ 12004-I,
subsection 7-C, within the Department of Agriculture, Food and
26 Rural Resources, consists of the following 5 members: four
producers and one dealer appointed by the Commissioner of
28 Agriculture, Food and Rural Resources on the recommendation of
various producer and dealer associations, individuals or
30 unorganized groups of producers and dealers in this State.

32 The 4 producer members must include 2 members selling milk
on the Maine market and 2 members selling milk on the Boston
34 market, Federal Milk Market Order No. 1. Producer members
selling in the same market may not belong to the same
36 agricultural cooperative or sell their milk to the same dealer.

38 The first 4 members appointed to the council as
reconstituted in this section shall serve one-year, 2-year,
40 3-year and 4-year terms respectively. All subsequent
appointments to the council as reconstituted in this section must
42 be for 4-year terms. A person may not be appointed to more than
2 consecutive 4-year terms. In case of a vacancy caused by
44 death, resignation or otherwise, the vacancy must be filled by
the commissioner for the unexpired period of the term.

46 The members of the council shall elect a chair.

48 Members of the council are entitled to compensation
50 according to Title 5, chapter 379. The cost of administration of

2 the council, including expenses and compensation of members, may
not exceed the money collected under this chapter. ~~The council
4 must be furnished a suitable office at the seat of government
together with all necessary equipment and supplies for the office.~~

6 **Sec. 14. 7 MRSA §2998-A**, as enacted by PL 1993, c. 689, §4,
is repealed and the following enacted in its place:

8 **§2998-A. Staffing**

10 The department may employ a director and other temporary or
12 permanent employees as it may require.

14 **Sec. 15. 7 MRSA §2999, sub-§1**, as enacted by PL 1993, c. 689,
§5, is amended to read:

16 **1. Contracts and agreements.** May make or enter into
18 contracts or agreements with any local, state, federal or private
agency, department, firm, corporation or association for the
20 purposes defined in this chapter. The contracts or agreements
may include, without limitation, those relating to the lease or
22 purchase of office space, facilities, property, equipment or
supplies the ~~council~~ department determines necessary for its
24 purposes. ~~The council may delegate to its executive director the
power to enter into the contracts or agreements, subject to the
26 council's oversight;~~

28 **Sec. 16. 7 MRSA §2999, sub-§3**, as enacted by PL 1993, c. 689,
§5, is repealed.

30 **Sec. 17. 7 MRSA §2999, sub-§4**, as enacted by PL 1993, c. 689,
32 §5, is amended to read:

34 **4. Annual report.** Shall prepare an annual report that must
include a summary of all receipts and expenditures, including
36 expenditures for specific programs; and a description of the
various programs operated, contracted or sponsored by the ~~council~~
38 department under this chapter; and a directory of current council
~~members, including their affiliation and term of office; and~~

40 **Sec. 18. 7 MRSA §3901**, as enacted by PL 1987, c. 383, §3, is
42 amended to read:

44 **§3901. Animal Welfare Act**

46 This chapter shall ~~be~~ is known and may be cited as the
"Animal Welfare Board Act."

48 **Sec. 19. 7 MRSA §3903-A**, as enacted by PL 1991, c. 779, §4,
50 is repealed.

2 **Sec. 20. 7 MRSA §3904**, as amended by PL 1991, c. 779, §5, is
repealed.

4 **Sec. 21. 7 MRSA §3905**, as amended by PL 1991, c. 779, §6, is
6 repealed.

8 **Sec. 22. 7 MRSA §3906-A**, as enacted by PL 1991, c. 779, §8,
is repealed.

10 **Sec. 23. 7 MRSA §3906-B, sub-§5**, as enacted by PL 1991, c.
12 779, §9, is repealed.

14 **Sec. 24. 7 MRSA §3906-B, sub-§9**, as amended by PL 1993, c.
16 468, §3, is further amended to read:

18 **9. Employees.** The commissioner shall employ personnel,
subject to the Civil Service Law, as necessary to assist in
20 enforcing this Part and in carrying out the duties and
responsibilities of the department. The commissioner, in
22 consultation with the board Animal Welfare Advisory Committee,
shall employ, subject to the Civil Service Law, one full-time
24 humane agent to assist the board commissioner in carrying out its
the commissioner's duties and responsibilities. The commissioner
26 may not hire as a state humane agent a person who has been
convicted of a criminal violation under Title 17, chapter 42 or
28 has been adjudicated of a civil violation for cruelty to animals
under chapter 739.

30 **Sec. 25. 7 MRSA §3906-B, sub-§§11 to 15** are enacted to read:

32 11. Cruelty to animals. The commissioner, in cooperation
with animal control officers, shall investigate complaints of
34 cruelty to animals and enforce cruelty-to-animal laws in
accordance with chapter 739 and Title 17, chapter 42. The
36 Attorney General and the district attorneys shall assist the
commissioner with the commissioner's enforcement responsibilities.

38 12. Intermittent agents. The commissioner shall appoint
40 intermittent humane agents as necessary to assist the
commissioner in carrying out the commissioner's duties and
42 responsibilities. The commissioner shall train and coordinate
efforts of intermittent agents. These intermittent agents are
44 unclassified employees whose training, compensation and hours of
employment are determined by the commissioner.

46 13. Spaying and neutering fund. The commissioner may
48 accept funds from any private or public source for the purpose of
subsidizing spaying and neutering. The commissioner shall
50 deposit all funds accepted for this purpose into a separate,

2 nonlapsing spaying and neutering account. The commissioner shall
3 establish guidelines for payments and make payments from the
4 fund. All payments from the fund must be used to subsidize
5 spaying and neutering of dogs and cats.

6 14. Information. The commissioner may obtain, develop or
7 disseminate any information useful or convenient for carrying out
8 any purpose or power of the commissioner.

10 15. Annual report. The commissioner shall report the
11 activities of the commissioner annually by March 1st to the joint
12 standing committee of the Legislature having jurisdiction over
13 agricultural matters. This report must include a summary of
14 cases of cruelty to animals investigated by the commissioner and
15 an account of deposits into and payments from the spaying and
16 neutering fund.

18 Sec. 26. 7 MRSA §3906-C, sub-§1, as enacted by PL 1991, c.
19 779, §10, is amended to read:

20
21 1. Membership. The committee consists of 6 & 8 members
22 appointed by the Governor and ~~subject to review by the joint~~
23 ~~standing committee of the Legislature having jurisdiction over~~
24 ~~agricultural matters and confirmation by the Legislature.~~ The
25 Governor shall appoint members as follows:

26 A. One municipal clerk;

28 B. One animal control officer;

30 C. One member representing licensed animal shelters;

32 D. One member representing licensed boarding or breeding
34 kennels;

36 E. One member representing licensed pet shops; and

38 F. One member representing humane societies;

40 G. One member who is or has been a veterinarian licensed to
41 practice in the State; and

42 H. One member who represents the interests of the public in
43 animal welfare, generally.

46 In making the appointment of the veterinarian member, the
47 Governor shall consider nominations made by the Maine Veterinary
48 Medical Association.

2 **Sec. 27. Allocation.** The following funds are allocated from
 Other Special Revenue funds to carry out the purposes of this Act.

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1995-96 **1996-97**

**AGRICULTURE, FOOD AND RURAL
 RESOURCES, DEPARTMENT OF**

Dairy Promotion Board

Personal Services	(\$991)	\$1,888
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Provides for the allocation of funds to class exchange one Executive Director Maine Dairy and Nutrition council position to one Program Manager position.

Sec. 28. Transition provisions; Maine Dairy Promotion Board; Maine Dairy and Nutrition Council.

1. Successor in powers. The Department of Agriculture, Food and Rural Resources is the successor in every way to the powers, duties and functions of the Maine Dairy Promotion Board and the Maine Dairy and Nutrition Council as set forth in the Maine Revised Statutes, Title 7, chapters 604 and 604-A.

2. Rules. All existing rules and procedures in effect, in operation or adopted by the board or the council relating to the exercise of their powers, duties and functions under Title 7, chapters 604 and 604-A are declared to be in effect and continue to be in effect until rescinded, revised or amended by the Department of Agriculture, Food and Rural Resources.

3. Obligations. All existing contracts, agreements and compacts of the commission relating to Title 7, chapters 604 and 604-A continue in effect and all obligations and rights of the commission become the obligations and rights of the Department of Agriculture, Food and Rural Resources.

4. Property. All records, property and equipment in the possession of the commission that pertain to or were allocated or assigned for the commission's use in carrying out the responsibilities under Title 7, chapters 604 and 604-A become the records, property and equipment of the Department of Agriculture, Food and Rural Resources.

2 **Sec. 29. Maine Revised Statutes amended; Maine Dairy and**
Nutrition Council; revision clause. Wherever in the Maine Revised
 4 Statutes, Title 12, chapter 604-A, the words "Maine Dairy and
 6 Nutrition Council" or "council" appear or reference is made to
 those words, they are amended to read and mean "Department of
 Agriculture, Food and Rural Resources," and the Revisor of
 8 Statutes shall implement this revision when updating, publishing
 or republishing the statutes.

10 **Sec. 30. Maine Revised Statutes amended; Maine Dairy Promotion**
Board; revision clause. Wherever in the Maine Revised Statutes,
 12 Title 12, chapter 604, the words "Maine Dairy Promotion Board" or
 "board" appear or reference is made to those words, they are
 14 amended to read and mean "Department of Agriculture, Food and
 Rural Resources," and the Revisor of Statutes shall implement
 16 this revision when updating, publishing or republishing the
 statutes.

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

22 **FISCAL NOTE**

Allocation	1995-96	1996-97
Other Special Revenue	(\$991)	\$1,888

32 **STATEMENT OF FACT**

34 The bill repeals the Animal Welfare Board and transfers the
 36 board's responsibilities regarding investigation of pet animal
 cruelty complaints to the commissioner. Other powers and
 38 responsibilities of the board, such as the appointment of
 intermittent humane agents and the operation of a spaying and
 40 neutering fund, are also transferred to the commissioner. The
 role as well as the membership of the Animal Welfare Advisory
 42 Committee is expanded. The committee will include one member who
 is or has been a licensed veterinarian and another member who
 44 represents the interest of the public in animal welfare,
 generally. All committee members will continue to be appointed
 46 by the Governor, but will no longer be subject to legislative
 review and confirmation.

48 The bill makes adjustments to Other Special Revenue
 50 allocations for the Maine Dairy Promotion Board and provides for

2 the elimination of the Maine Dairy Promotion Board and the Maine
Dairy and Nutrition Council. These programs are funded through a
4 dairy industry tax and would continue to operate much as they
currently do. The department would carry out the programs with
6 the assistance and advice of a new Maine Dairy and Nutrition
Advisory Council and a Maine Dairy Promotion Advisory Board. The
8 current staff of the Maine Dairy Promotion Board and the Maine
Dairy and Nutrition Council are transferred to the department's
10 Division of Marketing and Production Development in order to
further coordinate and streamline the dairy promotion and
12 nutrition functions with the similar functions already carried
out by the department.