

MAINE STATE LEGISLATURE

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Date: 6/13/13

Minority

L.D. 486
(Filing No. H-492)

MARINE RESOURCES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
126TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "B" to H.P. 336, L.D. 486, Bill, "An Act To Provide for the Effective Marketing and Promotion of Maine Lobster"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 5 MRSA §12004-H, sub-§14, as enacted by PL 1991, c. 523, §1, is amended to read:

14.

| | | |
|--------------------------------|--------------------|---------------|
| <u>Maine Lobster Promotion</u> | \$55 Per Diem Plus | 12 MRSA §6455 |
| <u>Council Marketing</u> | Expenses | |
| <u>Collaborative</u> | | |

Sec. 2. 12 MRSA §6455, as amended by PL 2009, c. 567, §§7 and 8, is further amended to read:

§6455. Maine Lobster Marketing Collaborative

1. Collaborative established; purpose. The Maine Lobster Promotion Council Marketing Collaborative, established in Title 5, section 12004-H, subsection 14 and referred to in this subchapter as the "council collaborative," is created to promote and market actively Maine lobsters in state, regional, national and international markets. The council collaborative 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 collaborative 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:

COMMITTEE AMENDMENT

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

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

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

10 ~~The commissioner shall appoint the members of the council from among a list of~~
11 ~~nominees prepared by the Lobster Advisory Council. The commissioner shall appoint~~
12 ~~one member within each district for an initial term of one year, one member within each~~
13 ~~district for an initial term of 2 years and one member within each district for an initial~~
14 ~~term of 3 years. All subsequent members are appointed by the commissioner for terms of~~
15 ~~3 years. A person may not serve more than 2 consecutive 3 year terms as a member of~~
16 ~~the council. By majority vote, the council shall annually elect a chair from among its~~
17 ~~members. The commissioner is an ex officio, nonvoting member of the council.~~

18 **1-A. Collaborative is a public instrumentality.** The ~~council~~ collaborative is
19 established as a public instrumentality serving a public purpose. As a public
20 instrumentality:

21 A. Employees of the ~~council~~ collaborative may not be construed to be state
22 employees for any purpose, including the state civil service provisions of Title 5, Part
23 2 and Title 5, chapter 372 and the state retirement system provisions of Title 5, Part
24 20;

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

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

29 (1) All meetings and records of the ~~council~~ collaborative are subject to the
30 provisions of Title 1, chapter 13, subchapter 1, except as provided in subsection
31 1-B. The commissioner and those members of the Legislature appointed to serve
32 on the joint standing committee of the Legislature having jurisdiction over
33 marine resource matters have access to all material designated confidential by the
34 ~~council~~ collaborative;

35 (2) ~~Except as required by subsection 2, members~~ Members of the ~~council~~
36 collaborative are governed by the conflict of interest provisions set forth in Title
37 5, section 18; and

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

41 **1-B. Market studies and promotional plans; proprietary information.**
42 Information provided to or developed by the ~~council~~ collaborative and included in a

1 promotional plan or market study is public unless the ~~council~~ collaborative determines
2 that it contains proprietary information. For the purposes of this subsection, "proprietary
3 information" means information that is a trade secret or production, commercial or
4 financial information the disclosure of which would impair the competitive position of
5 the ~~council~~ collaborative or the person submitting the information and would make
6 available information not otherwise publicly available.

7 **1-C. Collaborative members; appointments; terms.** The collaborative consists of
8 11 voting members, 9 appointed by the commissioner as follows:

9 A. Four individuals representing the lobster management policy councils established
10 pursuant to section 6447. Each lobster management policy council shall prepare a list
11 of up to 3 nominees from its zone for consideration by the commissioner for the
12 appointments under this paragraph. In making appointments under this paragraph, the
13 commissioner shall select members to ensure a geographic distribution of
14 representation from lobster management zones established pursuant to section 6446;

15 B. Three individuals:

16 (1) At least 2 of whom are owners, managers or officers of business entities
17 operating in the State that hold valid wholesale seafood licenses with lobster
18 permits, from a list of nominees prepared for the commissioner by the Lobster
19 Advisory Council established under section 6462-A; and

20 (2) At least one of whom represents the interests of lobster dealers and
21 processors; and

22 C. Two individuals who are public members with experience in marketing and
23 promotion, retail sales, food service or food science, from a list of nominees prepared
24 for the commissioner by the Lobster Advisory Council established under section
25 6462-A.

26 Members are appointed by the commissioner for terms of 3 years. A person may not
27 serve more than 2 consecutive 3-year terms as a member of the collaborative.

28 The commissioner or the commissioner's designee serves as an ex officio member of the
29 collaborative. The Commissioner of Economic and Community Development or the
30 commissioner's designee serves as an ex officio member of the collaborative.

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

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

35 ~~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~~
37 ~~period of at least 5 consecutive years; or~~

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

40 ~~C. One person who is a public member.~~

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

3 2-A. Officers. By majority vote, the collaborative shall annually elect a chair from
4 among its members and may elect other officers in accordance with its bylaws.

5 3. Meetings. The ~~council~~ collaborative shall meet at least quarterly. A quorum of 5
6 6 members is required to conduct the business of the ~~council~~ collaborative. Additional
7 meetings may be called by the chair. If 3 or more members of the ~~council~~ collaborative
8 submit to the chair a written request for a meeting, the chair shall call a meeting to be
9 held no sooner than 14 days after receipt of the written request. The commissioner may
10 remove any member with unexcused absences from 2 or more consecutive meetings of
11 the ~~council~~ collaborative.

12 3-A. Employees. The ~~council~~ collaborative shall hire ~~a full-time~~ an executive
13 director and may hire staff as needed to perform its duties. Employees of the Maine
14 Lobster Promotion Council Marketing Collaborative serve at the pleasure of the ~~council~~
15 collaborative. The salary and benefits for employees of the ~~council~~ collaborative are
16 determined by the ~~council~~ collaborative.

17 4. Powers and duties. The ~~council~~ collaborative may:

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

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

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

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

26 D-1. Market and sell goods directly related to the functions of the ~~council~~
27 collaborative and deposit all proceeds in the Lobster Promotion Fund;

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

30 (1) Promotion, advertising and marketing development. The ~~council~~
31 collaborative may implement programs and activities to promote, advertise and
32 develop markets for lobster and make or enter into contracts with any local, state,
33 federal or private agency, department, firm, corporation, entity or person for
34 those purposes; and

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

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

1 **5. Lobster Promotion Fund established.** The Lobster Promotion Fund, referred to
2 in this subchapter as the "fund," is established to carry out the purposes of this
3 subchapter. The department shall pay to the fund all money appropriated or received by
4 the department for the purposes of this subchapter, except that the department may retain
5 funds necessary to reimburse the department for the actual cost of collecting the license
6 surcharges established in ~~this subsection 5-A~~. The fund is capitalized from the ~~following~~
7 annual surcharges ~~assessed on the following licenses issued by the department for~~
8 ~~calendar years 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003,~~
9 ~~2004 and 2005 to 2020; set out in subsection 5-A.~~

10 A. ~~Class I crab and lobster licenses for persons 18 to 69 years of age, \$31.25;~~

11 B. ~~Class II crab and lobster licenses, \$62.50, except that for license holders 70 years~~
12 ~~of age or older the surcharge is \$32;~~

13 C. ~~Class III crab and lobster licenses, \$93.75, except that for license holders 70 years~~
14 ~~of age or older the surcharge is \$47;~~

15 D. ~~Wholesale seafood licenses with lobster permits, \$250;~~

16 E. ~~Lobster transportation licenses, \$250; and~~

17 F. ~~Nonresident lobster and crab landing permits, \$250.~~

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

20 ~~The Treasurer of State shall hold all surcharges assessed by this subsection in the fund~~
21 ~~and invest all money in the fund until disbursed to the council upon request of the~~
22 ~~council. Interest from investments accrues to the fund.~~

23 ~~All money in the fund is subject to allocation by the Legislature. Unexpended balances in~~
24 ~~the fund at the end of the fiscal year may not lapse but must be carried forward to be used~~
25 ~~for the same purposes.~~

26 ~~In addition to payment of the regular license fee and the surcharge, a person purchasing a~~
27 ~~license subject to the surcharges established in this subsection may make voluntary~~
28 ~~contributions to the fund at the time the license is purchased. Voluntary contributions~~
29 ~~received by the department from a licensee pursuant to this subsection must be deposited~~
30 ~~in the fund by the department and must be used by the council for the purposes of this~~
31 ~~subchapter.~~

32 **5-A. License surcharge assessed.** The fund is capitalized from annual surcharges
33 ~~assessed on licenses issued by the department for calendar years as follows.~~

34 A. For the year 2013 the surcharges are, for:

35 (1) Class I lobster and crab fishing licenses for persons 18 to 69 years of age,
36 \$31.25;

37 (2) Class II lobster and crab fishing licenses, \$62.50, except that for license
38 holders 70 years of age or older the surcharge is \$32;

39 (3) Class III lobster and crab fishing licenses, \$93.75, except that for license
40 holders 70 years of age or older the surcharge is \$47;

- 1 (4) Nonresident lobster and crab landing permits, \$250;
- 2 (5) Wholesale seafood licenses with lobster permits, \$250; and
- 3 (6) Lobster transportation licenses, \$250.

4 B. For the year 2014 the surcharges are, for:

- 5 (1) Class I lobster and crab fishing licenses for persons 18 to 69 years of age,
- 6 \$55.25;
- 7 (2) Class II lobster and crab fishing licenses, \$110.50, except that for license
- 8 holders 70 years of age or older the surcharge is \$55;
- 9 (3) Class III lobster and crab fishing licenses, \$160.75, except that for license
- 10 holders 70 years of age or older the surcharge is \$80;
- 11 (4) Nonresident lobster and crab landing permits, \$425;
- 12 (5) Wholesale seafood licenses with lobster permits, \$1,300;
- 13 (6) Lobster transportation licenses, \$1,300; and
- 14 (7) Lobster processor licenses, \$2,000.

15 C. For the year 2015 the surcharges are, for:

- 16 (1) Class I lobster and crab fishing licenses for persons 18 to 69 years of age,
- 17 \$111.25;
- 18 (2) Class II lobster and crab fishing licenses, \$221.50, except that for license
- 19 holders 70 years of age or older the surcharge is \$110;
- 20 (3) Class III lobster and crab fishing licenses, \$320.75, except that for license
- 21 holders 70 years of age or older the surcharge is \$160;
- 22 (4) Nonresident lobster and crab landing permits, \$850;
- 23 (5) Wholesale seafood licenses with lobster permits, \$2,600;
- 24 (6) Lobster transportation licenses, \$2,600; and
- 25 (7) Lobster processor licenses, \$4,000.

26 D. For the years 2016 to 2018 the surcharges are, for:

- 27 (1) Class I lobster and crab fishing licenses for persons 18 to 69 years of age,
- 28 \$167.25;
- 29 (2) Class II lobster and crab fishing licenses, \$331.50, except that for license
- 30 holders 70 years of age or older the surcharge is \$165;
- 31 (3) Class III lobster and crab fishing licenses, \$480.75, except that for license
- 32 holders 70 years of age or older the surcharge is \$240;
- 33 (4) Nonresident lobster and crab landing permits, \$1,275;

1 (5) Wholesale seafood licenses with lobster permits, \$3,900;

2 (6) Lobster transportation licenses, \$3,900; and

3 (7) Lobster processor licenses, \$6,000.

4 A person holding more than one of the licenses listed in this subsection is assessed a
5 surchARGE only on the highest surchargeable license held.

6 Beginning in 2014, the commissioner shall review annually the surcharges established in
7 this subsection and recommend changes to the joint standing committee of the Legislature
8 having jurisdiction over marine resource matters, which after receiving the
9 recommendations may report out a bill to the Legislature to adjust surcharges.

10 The Treasurer of State shall hold all surcharges assessed by this subsection in the fund
11 and invest all money in the fund until disbursed to the collaborative upon request of the
12 collaborative. Interest from investments accrues to the fund.

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

16 In addition to payment of the regular license fee and the surcharge, a person purchasing a
17 license subject to the surcharges established in this subsection may make voluntary
18 contributions to the fund at the time the license is purchased. Voluntary contributions
19 received by the department from a licensee or any other source pursuant to this subsection
20 must be deposited in the fund by the department and must be used by the collaborative for
21 the purposes of this subchapter.

22 **6. Reports.** By February 15th of each year, the council The collaborative shall
23 report annually on its activities and expenditures to the joint standing committees
24 committee of the Legislature having jurisdiction over financial affairs and marine
25 resource matters on the programs undertaken pursuant to this subchapter, expenditures
26 from the fund and balances in all accounts in the fund, to the Lobster Advisory Council
27 established under section 6462-A and, at a statewide meeting of interested license
28 holders, to the lobster industry. The collaborative shall provide notice of the date and
29 location of the statewide meeting of license holders at the time of license issuance or
30 renewal.

31 **7. Audit.** An annual audit of the expenditures of the council collaborative must be
32 performed. The council collaborative may contract with the Department of Audit Office
33 of the State Auditor or with a private sector accounting firm to conduct the audit. The
34 council collaborative shall report the results of that audit to the joint standing committee
35 of the Legislature having jurisdiction over marine resource matters. If the annual audit is
36 performed by the Department of Audit Office of the State Auditor, the council
37 collaborative shall reimburse the department for its costs to conduct that audit.

38 **8. Review.** By January 15, 2014, the collaborative shall present to the joint standing
39 committee of the Legislature having jurisdiction over marine resource matters a 3-year
40 marketing plan with a detailed work plan and budget for the collaborative's programs and
41 activities from 2014 to 2015. By January 15, 2018, the collaborative shall report to the
42 Lobster Advisory Council established under section 6462-A and the joint standing

1 committee of the Legislature having jurisdiction over marine resource matters the results
2 of a 3rd-party audit of the results of the collaborative's programs and activities from 2014
3 to 2017. Based on the outcome of that audit and with consideration of any
4 recommendations by the Lobster Advisory Council, the committee may report out a bill
5 to the Legislature to renew the license surcharges under subsection 5-A or adjust them as
6 appropriate.

7 This section is repealed October 1, 2018.

8 **Sec. 3. 12 MRSA §6465, sub-§2, ¶G,** as enacted by PL 2001, c. 623, §1, is
9 amended to read:

10 G. The ~~Lobster Promotion Council~~ Maine Lobster Marketing Collaborative under
11 section 6455;

12 **Sec. 4. 29-A MRSA §456-A, sub-§3,** as enacted by PL 2001, c. 623, §4, is
13 amended to read:

14 **3. Design.** The Secretary of State, in consultation with the ~~Lobster Promotion~~
15 ~~Council~~ Maine Lobster Marketing Collaborative under Title 12, section 6455, shall
16 determine a design for the lobster special registration plates. The joint standing
17 committee of the Legislature having jurisdiction over transportation matters shall review
18 the final design prior to manufacture of the plates. The Secretary of State shall issue
19 upon request lobster plates that are also vanity plates. Lobster plates are issued in
20 accordance with the provisions of this section and section 453.

21 **Sec. 5. Maine Revised Statutes headnote amended; revision clause.** In the
22 Maine Revised Statutes, Title 12, chapter 619, subchapter 3-A, in the subchapter
23 headnote, the words "lobster promotion council" are amended to read "maine lobster
24 marketing collaborative" and the Revisor of Statutes shall implement this revision when
25 updating, publishing or republishing the statutes.

26 **Sec. 6. Members of Lobster Promotion Council; transition.**
27 Notwithstanding the Maine Revised Statutes, Title 12, section 6455, subsection 1-C, the
28 members of the Lobster Promotion Council serving immediately prior to the effective
29 date of this Act continue to serve as members of the Maine Lobster Marketing
30 Collaborative for the terms for which they were appointed until the Commissioner of
31 Marine Resources appoints their successors.

32 **Sec. 7. Appropriations and allocations.** The following appropriations and
33 allocations are made.

34 **LOBSTER PROMOTION COUNCIL**

35 **Lobster Promotion Fund 0701**

36 Initiative: Provides funding to perform increased marketing efforts in the lobster industry.

| | | | |
|----|------------------------------------|----------------|----------------|
| 37 | OTHER SPECIAL REVENUE FUNDS | 2013-14 | 2014-15 |
| 38 | All Other | \$1,000,000 | \$2,000,000 |
| 39 | | _____ | _____ |

1 OTHER SPECIAL REVENUE FUNDS TOTAL \$1,000,000 \$2,000,000
2

3 **SUMMARY**

4 This amendment, which is the minority report, replaces the bill and changes the
5 provisions of the law establishing the Lobster Promotion Council as follows.

- 6 1. It renames the council the Maine Lobster Marketing Collaborative.
- 7 2. It increases, beginning in 2014, the surcharge assessed on lobster harvester and
8 dealer licenses and creates a surcharge on the lobster processor license to fund the
9 marketing collaborative. Under this amendment the lobster dealer and transportation
10 licenses are assessed a surcharge of \$1,300 in 2014 rising to \$3,900 for years 2016 to
11 2018. The lobster processing license is assessed a surcharge of \$2,000 in 2014 rising to
12 \$6,000 for years 2016 to 2018. It requires the Commissioner of Marine Resources to
13 review the surcharges annually and report to the joint standing committee of the
14 Legislature having jurisdiction over marine resources matters, which may report out a bill
15 to adjust the surcharges.
- 16 3. It changes the number of members, the criteria for membership and the selection
17 process.
- 18 4. It requires that the collaborative present to the joint standing committee of the
19 Legislature having jurisdiction over marine resources matters by January 15, 2014 a 3-
20 year marketing plan with a detailed work plan and proposed budget for programs and
21 activities for 2014 and 2015. It retains the provisions of the bill that require a report by
22 January 15, 2018 to the Lobster Advisory Council and the joint standing committee of the
23 Legislature having jurisdiction over marine resources matters with respect to the results
24 of a 3rd-party audit of programs and activities and that allow the committee to report out
25 a bill based on the report.
- 26 5. It requires that the collaborative report annually to the joint standing committee of
27 the Legislature having jurisdiction over marine resources matters, the Lobster Advisory
28 Council and the lobster industry.
- 29 6. It provides that the provisions of law establishing the collaborative and the
30 surcharges are repealed October 1, 2018.
- 31 7. It adds an appropriations and allocations section.

32 **FISCAL NOTE REQUIRED**
33 **(See attached)**



126th MAINE LEGISLATURE

LD 486

LR 469(03)

An Act To Provide for the Effective Marketing and Promotion of Maine Lobster

Fiscal Note for Bill as Amended by Committee Amendment

B (H-492)

Committee: Marine Resources

Fiscal Note Required: Yes

Fiscal Note

| | FY 2013-14 | FY 2014-15 | Projections FY 2015-16 | Projections FY 2016-17 |
|-----------------------------------|-------------|-------------|---------------------------|---------------------------|
| Appropriations/Allocations | | | | |
| Other Special Revenue Funds | \$1,000,000 | \$2,000,000 | \$3,000,000 | \$3,000,000 |
| Revenue | | | | |
| Other Special Revenue Funds | \$1,000,000 | \$2,000,000 | \$3,000,000 | \$3,000,000 |

Fiscal Detail and Notes

This legislation increases the license surcharge fee on crab and lobster licenses and certain dealer licenses resulting in an increase in Other Special Revenue Funds revenue to the Maine Lobster Marketing Collaborative of \$1,000,000 in fiscal year 2013-14 and \$2,000,000 in fiscal year 2014-15. The bill includes a corresponding Other Special Revenue Funds allocation to the Maine Lobster Marketing Collaborative in order to conduct increased marketing efforts in the lobster industry.

Additional costs to the Department of Economic and Community Development to serve on the Collaborative can be absorbed within existing budgeted resources.