MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 643

S.P. 233

In Senate, February 21, 2013

An Act To Create a Tax Incentive Program To Improve the Maine Lobster Industry

(EMERGENCY)

Reference to the Committee on Marine Resources suggested and ordered printed.

DAREK M. GRANT Secretary of the Senate

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Presented by Senator JOHNSON of Lincoln.
Cosponsored by Representative KUMIEGA of Deer Isle and
Senators: President ALFOND of Cumberland, BOYLE of Cumberland, DUTREMBLE of
York, GERZOFSKY of Cumberland, GOODALL of Sagadahoc, HASKELL of Cumberland,
HILL of York, JACKSON of Aroostook, MAZUREK of Knox, PATRICK of Oxford,
SAVIELLO of Franklin, Representatives: BLACK of Wilton, COOPER of Yarmouth,
DICKERSON of Rockland, HICKMAN of Winthrop, HUBBELL of Bar Harbor, MASON of
Topsham, PEOPLES of Westbrook, SAXTON of Harpswell, VILLA of Harrison.

Emergency preamble. Whereas, acts and resolves of the Legislature do no become effective until 90 days after adjournment unless enacted as emergencies; and
Whereas, the lobster industry is an important part of the State's economy; and
Whereas, lobster harvesters in the State are heavily reliant on Canadian processing companies because there are only a few commercial lobster processing companies in the State; and
Whereas, in recent years lobster harvesters in the State have had difficulty selling their lobsters to Canadian processing companies; and
Whereas, commercial lobster processing companies in the State need tax incentives in order to compete with the subsidized Canadian lobster processing companies; and
Whereas, without rapid enactment of the tax incentives proposed in this legislation Maine's lobster industry may suffer significant harm; and
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 necessary for the preservation of the public peace, health and safety; now therefore,
Be it enacted by the People of the State of Maine as follows:
Be it enacted by the People of the State of Maine as follows:
PART A Sec. A-1. 36 MRSA §2013-A is enacted to read:
PART A Sec. A-1. 36 MRSA §2013-A is enacted to read: §2013-A. Refund of sales tax paid for commercial lobster processing; exemption 1. Definitions. As used in this section, unless the context otherwise indicates, the
PART A Sec. A-1. 36 MRSA §2013-A is enacted to read: §2013-A. Refund of sales tax paid for commercial lobster processing; exemption 1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings. A. "Commercial lobster processing" means commercial seafood processing performed by a person who holds a wholesale seafood license with lobster permit under Title 12, section 6851, subsection 2-A. B. "Depreciable machinery and equipment" means, except as otherwise provided by this paragraph, that part of new or used machinery and equipment for which depreciation is allowable under the Code, and repair parts for that machinery and equipment, that is for use directly and primarily in commercial lobster processing including, but not limited to, lobster meat scoring and extraction systems, automated
PART A Sec. A-1. 36 MRSA §2013-A is enacted to read: §2013-A. Refund of sales tax paid for commercial lobster processing; exemption 1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings. A. "Commercial lobster processing" means commercial seafood processing performed by a person who holds a wholesale seafood license with lobster permit under Title 12, section 6851, subsection 2-A. B. "Depreciable machinery and equipment" means, except as otherwise provided by this paragraph, that part of new or used machinery and equipment for which depreciation is allowable under the Code, and repair parts for that machinery and equipment, that is for use directly and primarily in commercial lobster processing

- 2. Refund authorized. A person that purchases electricity, or that purchases or 1 2 leases depreciable machinery or equipment, for use in commercial lobster processing 3 must be refunded the amount of sales tax paid upon presenting to the assessor evidence 4 that the purchase is eligible for refund under this section. Evidence required by the 5 assessor may include a copy or copies of that portion of the purchaser's or lessee's most 6 recent filing under the Code that indicates that the purchaser or lessee is engaged in 7 commercial lobster processing and that the purchased machinery or equipment is 8 depreciable for those purposes or would be depreciable for those purposes if owned by 9 the lessee.
- In the event that any piece of machinery or equipment is only partially depreciable under
 the Code, any reimbursement of the sales tax must be prorated accordingly. In the event
 that electricity is used in qualifying and nonqualifying activities, any reimbursement of
 the sales tax must be prorated accordingly.
- Application for refunds must be filed with the assessor within 36 months of the date of purchase or execution of the lease.
 - 3. Purchases made free of tax with certificate. Sales tax need not be paid on the purchase of machinery or equipment if the purchaser has obtained a certificate from the assessor stating that the purchaser is engaged in commercial lobster processing and authorizing the purchaser to purchase depreciable machinery and equipment without paying Maine sales tax. The seller is required to obtain a copy of the certificate together with an affidavit as prescribed by the assessor, to be maintained in the seller's records, attesting to the qualification of the purchase for exemption pursuant to this section. In order to qualify for this exemption, the depreciable machinery or equipment must be used directly in commercial lobster processing.
 - 4. Information on processes for refunds and appeals. The assessor shall post information describing the process for requesting a refund under this section on the bureau's publicly accessible website along with a description of the process to appeal a denial of refund request.
 - 5. Reporting required. Beginning in 2014, a person that purchases or leases depreciable machinery or equipment for use in commercial lobster processing and receives a refund of sales tax pursuant to subsection 2 or makes a purchase free of tax pursuant to subsection 3 shall file a report, no later than January 1st and annually thereafter, with the assessor. The report must be in a form prescribed by the assessor and, for the tax year in which the sales tax is refunded or exempt, contain the following information:
 - A. The number of employees the person employs in commercial lobster processing;
- B. The average salary or wages of the employees under paragraph A;
- 38 <u>C. A description of the benefits provided to the employees under paragraph A and</u> the value of those benefits;
- D. The number of pounds of lobster processed; and

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E. The market share of the commercial lobster processing company.

- 6. Audit of report. In order to determine if a person engaged in commercial lobster processing was eligible for the refund of sales tax pursuant to subsection 2 or exemption claimed pursuant to subsection 3, the assessor may audit any report, refund claim or return filed under this chapter by that person. If the assessor concludes the person was not eligible for the refund or exemption, the assessor shall issue an assessment for the applicable amount within 3 years after the date of the purchase for which a refund or exemption was received. A person audited pursuant to this subsection may seek reconsideration of any determination or assessment pursuant to section 151.
- 7. Report to Legislature. Beginning in 2014, the assessor shall submit a report, no later than March 1st and annually thereafter, to the joint standing committee of the Legislature having jurisdiction over taxation matters. The report must include aggregate data on employment, wages, benefits, pounds of lobster processed and market share as reported by commercial lobster processing companies pursuant to subsection 5 and the amount of tax expenditure attributable to the commercial lobster processing companies' receiving the refund of sales tax pursuant to subsection 2 and exemption pursuant to subsection 3.
- **8. Review.** The joint standing committee of the Legislature having jurisdiction over taxation matters shall annually review the aggregate data provided by the assessor pursuant to subsection 7. The joint standing committee of the Legislature having jurisdiction over taxation matters may issue a report of its findings and recommendations, including any legislation necessary to implement recommendations. The joint standing committee of the Legislature having jurisdiction over taxation matters is authorized to submit a bill to the Legislature to implement recommendations resulting from the review.
 - **9. Repeal.** This section is repealed June 30, 2018.
- **Sec. A-2.** Effective date. This Part takes effect July 1, 2013.

PART B

- **Sec. B-1.** Working group established. The Commissioner of Economic and Community Development and the Commissioner of Marine Resources, referred to in this Part as "the commissioners," shall jointly convene a working group and make recommendations for improving the competitiveness of commercial lobster processing companies in this State.
- **Sec. B-2. Working group members.** The working group must include the following as members:
 - 1. The Commissioner of Economic and Community Development or the commissioner's designee;
 - 2. The Commissioner of Marine Resources or the commissioner's designee;
 - 3. The Associate Commissioner for Tax Policy within the Department of Administrative and Financial Services, Bureau of Revenue Services or the associate commissioner's designee;

1 4. The Chief Executive Officer of the Finance Authority of Maine or the chief executive officer's designee: 2 3 5. The president of the Maine International Trade Center or the president's designee; 4 6. A representative of the Lobster Promotion Council established by Title 5, section 5 12004-H. subsection 14: 7. A representative of the Lobster Advisory Council established by Title 5, section 6 7 12004-I, subsection 58; and 8 8. Representatives from the following organizations invited by the commissioners: 9 A. A statewide association representing the interests of persons who harvest lobster 10 commercially; B. An association representing the interests of persons who harvest lobster 11 commercially in Washington and Hancock counties; 12. 13 C. An association in southern Maine representing the interests of persons who harvest 14 lobster commercially; 15 D. A statewide import-export lobster dealers' association; 16 E. A statewide lobster pound owners' association; 17 F. A statewide lobster processors' association; and 18 G. An international lobster institute. This member must be a resident of the State. **Sec. B-3. Duties.** The working group shall: 19 20 1. Examine factors that undermine the competitiveness of commercial lobster processing companies in the State; 21 22 2. Examine the extent to which the Canadian lobster industry is subsidized by the 23 Canadian government, including but not limited to tax incentives, health benefits provided to employees and direct subsidies; 24 25 3. Examine state, national and international data for commercial lobster processing companies regarding employment, wages, benefits, pounds of lobster processed and 26 27 market share; 28 4. Identify benchmarks for employment, wages, benefits, pounds of lobster processed 29 and market share for commercial lobster processing companies that may be used to determine eligibility for the sales tax refund and exemption established in the Maine 30 Revised Statutes, Title 36, section 2013-A; and 31 32 5. Develop recommendations for increasing commercial lobster processing in the

State, including but not limited to regulatory reform, tax incentives and potential sources

of funding in grants and low-interest loans to support Maine commercial lobster

processing companies, and strategies for strengthening the Maine lobster brand and the relationships within the industry to better promote Maine lobster and increase sales.

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Sec. B-4. Report. No later than January 15, 2014, the working group shall submit a report that includes its findings and recommendations, including suggested legislation, to the Joint Standing Committee on Taxation and the Joint Standing Committee on Marine Resources. The Joint Standing Committee on Taxation and the Joint Standing Committee on Marine Resources are authorized to introduce a bill related to the subject matter of the report to the Second Regular Session of the 126th Legislature upon receipt of the report.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved, except as otherwise indicated.

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This bill provides a sales tax refund and exemption, beginning July 1, 2013, to encourage capital investment in commercial lobster processing companies in the State and creates a working group that will examine broader issues and make recommendations by January 15, 2014 for improving the competitiveness of commercial lobster processing companies in the State.

Part A of the bill creates a sales tax refund and exemption for the purchase of depreciable machinery and equipment for use in commercial lobster processing beginning July 1, 2013. It requires commercial lobster processing companies receiving the exemption and refund to, beginning January 1, 2014, report annually to the State Tax Assessor on their market share, number of employees, average salary or wages, employee benefits and the number of pounds of lobster processed. It gives the State Tax Assessor auditing authority and the authority to recapture ineligible refunds and exemptions of sales tax within 3 years after the date of the refund or purchase. Beginning March 1, 2014, the bill requires the State Tax Assessor to submit a report annually to the joint standing committee of the Legislature having jurisdiction over taxation matters. The report must include, from the commercial lobster processing companies reporting, aggregate data on market share, employment, wages, benefits and the number of pounds of lobster processed as well as the amount of tax expenditure attributable to the commercial lobster processing companies' receiving the refund and exemption. requires the joint standing committee of the Legislature having jurisdiction over taxation matters to annually review the report provided by the State Tax Assessor and authorizes the joint standing committee of the Legislature having jurisdiction over taxation matters to issue a report of its findings and recommendations. It gives the joint standing committee of the Legislature having jurisdiction over taxation matters authority to submit a bill to the Legislature to implement recommendations resulting from the review. The sales tax refund and exemption available to commercial lobster processing companies expires June 30, 2018.

Part B of the bill creates a working group convened jointly by the Commissioner of Economic and Community Development and the Commissioner of Marine Resources to examine factors that undermine the competitiveness of Maine commercial lobster processing companies, the extent to which the Canadian lobster industry is subsidized and data on employment, wages, benefits, pounds of lobster processed and market share. It requires the working group to identify benchmarks that may be used to determine

eligibility for the sales tax refund and exemption. It requires the working group to make recommendations for increasing commercial lobster processing in the State and identify strategies for strengthening the Maine lobster brand and the relationships within the industry to better promote Maine lobster and increase sales. It requires the working group to report, no later than January 15, 2014, findings and recommendations to the Joint Standing Committee on Taxation and the Joint Standing Committee on Marine Resources. It authorizes the Joint Standing Committee on Taxation and the Joint Standing Committee on Marine Resources to introduce a bill related to the subject matter of the report to the Second Regular Session of the 126th Legislature upon receipt of the report.