

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 1534

H.P. 1054

House of Representatives, April 25, 2017

An Act To Address Hunger, Support Maine Farms and Reduce Waste

(EMERGENCY)

Reference to the Committee on Environment and Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative HICKMAN of Winthrop.
Cosponsored by Senator SAVIELLO of Franklin and
Representatives: ACKLEY of Monmouth, CASÁS of Rockport, GROHMAN of Biddeford,
HAMANN of South Portland, MADIGAN of Waterville, MAREAN of Hollis, MARTIN of
Eagle Lake, Senator: BREEN of Cumberland.

- 1 D. A representative of a primary or secondary school in the State; and
2 5. One member appointed by the Governor who is a staff person from the
3 sustainability division within the Department of Environmental Protection.

4 **Sec. A-3. Chairs.** The first-named Senate member is the Senate chair and the first-
5 named House of Representatives member is the House chair of the commission.

6 **Sec. A-4. Appointments; convening commission.** All appointments must be
7 made no later than 30 days following the effective date of this Part. The appointing
8 authorities shall notify the Executive Director of the Legislative Council once all
9 appointments have been completed. After appointment of all members, the chairs shall
10 call and convene the first meeting of the commission. If 30 days or more after the
11 effective date of this Part a majority of but not all appointments have been made, the
12 chairs may request authority and the Legislative Council may grant authority for the
13 commission to meet and conduct its business.

14 **Sec. A-5. Duties.** The commission shall meet a minimum of 4 times to:

15 1. Review and evaluate the economic, environmental and human costs of food waste
16 in Maine;

17 2. Assess current systems of food production, distribution and waste to determine
18 where and how food is wasted in a manner inconsistent with Maine's food recovery
19 hierarchy under the Maine Revised Statutes, Title 38, section 2101-B; and

20 3. Develop a comprehensive strategy to advance Maine's food recovery hierarchy by:

21 A. Developing strategies for keeping food waste out of the solid waste stream
22 through collaborative initiatives with large generators to divert food products that are
23 at or beyond the manufacturer's expiration date to hunger relief programs when
24 possible and to livestock consumption when a hunger relief program is not available;

25 B. Developing ways to educate food waste generators about the economic, human
26 and environmental costs of wasting food;

27 C. Developing guidance documents on the topics of food waste reduction methods
28 and opportunities for large generators and providing these documents to the
29 Department of Environmental Protection, the Department of Education and the
30 Department of Agriculture, Conservation and Forestry for distribution to appropriate
31 entities;

32 D. Increasing the composting of and energy recovery from food waste and other
33 organic wastes;

34 E. Maximizing organic waste diversion by large generators through measures
35 including, but not limited to, bans on the disposal of leaves, yard waste, food and
36 food scraps;

37 F. Developing ways to encourage the creation or expansion of businesses and
38 facilities to compost and convert compostable materials into energy resources in a
39 manner that produces residuals suitable for use for agricultural purposes;

1 G. Developing ways to encourage the creation of food waste reduction programs at
2 the residential and municipal levels; and

3 H. Examining any other ways of improving Maine's food recovery hierarchy.

4 In conducting the duties under this section, the commission shall seek public input
5 and shall consult and collaborate with stakeholders and experts in the fields of food
6 production and distribution, hunger relief, food recovery and recycling.

7 For purposes of this section, "large generator" means an entity that generates more
8 than one ton of food waste per week, including, but not limited to, a hospital, college,
9 university, primary or secondary school, restaurant, nursing home, retail food store or
10 lodging or resort facility.

11 **Sec. A-6. Staff assistance.** The Legislative Council shall provide necessary
12 staffing services to the commission. At the request of the commission, the Department of
13 Environmental Protection, the Department of Agriculture, Conservation and Forestry, the
14 Department of Education, the Department of Health and Human Services and other
15 agencies of State Government shall provide additional assistance to the commission.

16 **Sec. A-7. Report.** No later than December 6, 2017, the commission shall submit a
17 report that includes its findings and recommendations, including suggested legislation, for
18 presentation to the Joint Standing Committee on Environment and Natural Resources.

19 **PART B**

20 **Sec. B-1. 14 MRSA §166, sub-§1, ¶A-1** is enacted to read:

21 A-1. "End consumer" means an individual who consumes donated food, an
22 individual who prepares and serves donated food to the individual's family, a person
23 who feeds donated food to the person's livestock or an individual who composts
24 donated food.

25 **Sec. B-2. 14 MRSA §166, sub-§3,** as enacted by PL 1981, c. 300, is amended to
26 read:

27 **3. Immunity of distributor.** Notwithstanding any other provision of law, a bona
28 fide charitable or not-for-profit organization and any employee or volunteer of that
29 organization who in good faith receive and distribute food, ~~which~~ that is apparently fit for
30 human consumption at the time it is distributed, ~~without charge, or for a cost significantly~~
31 less than the fair market value of the item as long as the cost covers only overhead,
32 transportation and distribution costs of the charitable or not-for-profit organization, are
33 immune from civil liability arising from an injury or death due to the condition of the
34 food, unless the injury or death is a direct result of the gross negligence, recklessness or
35 intentional misconduct of the organization.

36 **Sec. B-3. 14 MRSA §166, sub-§5,** as enacted by PL 1991, c. 739, §1 and
37 amended by PL 2003, c. 689, Pt. B, §6, is further amended to read:

1 **5. Immunity of facilities and establishments.** Notwithstanding any other provision
2 of law, a hospital or other health care facility licensed by the Department of Health and
3 Human Services; or an eating establishment licensed under Title 22, chapter 562 that, in
4 good faith and in accordance with guidelines established by the recipient organization,
5 donates food that is apparently fit for human consumption at the time it is donated either
6 to an end consumer or to a bona fide charitable or nonprofit organization for free
7 distribution is immune from civil liability arising from injury, illness or death due to the
8 condition or content of the food, unless the injury, illness or death is a direct result of
9 intentional misconduct of the donor. Nothing in this subsection prevents a licensed
10 hospital, health care facility or eating establishment from receiving the immunity
11 provided in subsection 2 if the donor qualifies for immunity under the terms of that
12 subsection.

13 **Sec. B-4. 14 MRSA §166, sub-§6** is enacted to read:

14 **6. Guidelines for liability protections.** The Department of Health and Human
15 Services shall create and publish an easily understandable summary of the liability
16 protections established under this section and make that summary as accessible as
17 possible to food donors and distributors of donated food.

18 **Sec. B-5. 36 MRSA §5219-OO** is enacted to read:

19 **§5219-OO. Maine food producers donation tax credit**

20 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
21 following terms have the following meanings.

22 A. "Donation" means a contribution or gift within the meaning of Section 170(c) of
23 the Code of food that is apparently fit for human consumption at the time it is
24 donated to a nonprofit food assistance organization or to a public or private school as
25 defined in Title 20-A, section 1.

26 B. "Food insecurity" means the state of a person who is without reliable access to a
27 sufficient quantity of affordable, nutritious food.

28 C. "Food producer" means a resident individual of this State who produces food by
29 farming or fishing, or who processes such food, or an association of such producers
30 or processors in a cooperative or producer group.

31 D. "Nonprofit food assistance organization" means an entity located in the State:

32 (1) That is exempt from federal taxation under the Code, Section 501(c)(3); and

33 (2) Whose principal charitable purpose is to reduce food insecurity of residents
34 of this State directly or indirectly through a network of nonprofit food assistance
35 organizations.

36 **2. Credit.** Beginning on or after January 1, 2017, a taxpayer who is a food producer
37 that makes a donation may apply under this section for a credit against the taxes due
38 pursuant to section 5111 or section 5200, not to exceed 15% of the tax otherwise due. The
39 credit is equal to 50% of the fair market value of the donation and is available for the
40 taxable year in which the food producer makes the donation.

1 **3. Determining fair market value.** The fair market value of a donation is the
2 monetary value for which the food producer could have sold the donated product in the
3 food producer's usual market. The fair market value of a donation that is not sold due to
4 internal standards of the food producer or lack of market or because the food is produced
5 exclusively for donation is the price at which the same or similar types and qualities of
6 foods are sold by the food producer at the time of the donation. If the same or similar
7 types and qualities of foods are not sold by the food producer at the time of the donation,
8 the fair market value is the price at which the same or similar types and qualities of foods
9 were sold by the food producer in the past 5 years. The fair market value may not exceed
10 the fair market value used to claim the federal charitable deduction with respect to a
11 particular donation. The fair market value for the purposes of the credit under subsection
12 2 is not subject to the reductions contained in Section 170(e) of the Code.

13 **4. Record keeping.** A food producer who seeks a credit under this section shall
14 create and maintain a record of each donation for which the food producer seeks a credit
15 under this section. The record must include:

16 A. The name of the food producer;

17 B. The name of the nonprofit food assistance organization or public or private school
18 to which the donation was made;

19 C. The type of food donated;

20 D. The weight or quantity of the food donated. In the case of a donation of crops or
21 seafood in quantity, the quantity recorded must be in accordance with 26 United
22 States Code, Section 170(c);

23 E. The fair market value of the donation determined in accordance with subsection 3;
24 and

25 F. The signature of a representative of the nonprofit food assistance organization or
26 public or private school to which the donation was made. If the record made under
27 this subsection is not signed by such a representative, the food producer must obtain
28 and keep with the record a letter or receipt from that nonprofit food assistance
29 organization or public or private school to which the donation was made indicating
30 the type of food and quantity donated.

31 **5. Limitations.** Upon application from a food producer, the bureau may authorize
32 tax credits under this section. The bureau may not issue more than \$150,000 altogether in
33 tax credits pursuant to this section in any fiscal year. If the amount of credits applied for
34 in any fiscal year exceeds \$150,000, the bureau shall allocate credits on a pro rata basis to
35 all food producers who have applied for, and the bureau determines are eligible for, the
36 tax credits.

37 **6. Rulemaking.** The bureau shall adopt rules implementing the provisions of this
38 section. The rules must include procedures for food producers to apply for tax credits
39 under this section and for the allocation of tax credits among food producers, including a
40 procedure to allocate tax credits when applications exceed \$150,000 in any fiscal year
41 pursuant to subsection 5. Rules adopted under this subsection are routine technical rules
42 as defined in Title 5, chapter 375, subchapter 2-A.

