

MAINE STATE LEGISLATURE

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L.D. 391

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Date: 1-4-2022

(Filing No. H-751)

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Reproduced and distributed under the direction of the Clerk of the House.

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STATE OF MAINE

5

HOUSE OF REPRESENTATIVES

6

130TH LEGISLATURE

7

SECOND REGULAR SESSION

8

HOUSE AMENDMENT "A" to H.P. 275, L.D. 391, "An Act To Amend the Laws Regarding Marine Resources"

9

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Amend the bill by striking out the title and substituting the following:

11

'An Act To Reestablish the Maine Lobster Marketing Collaborative'

12

Amend the bill by inserting after the title and before the enacting clause the following:

13

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

14

15

Whereas, Public Law 2021, chapter 58 extended the repeal date of the law that established the Maine Lobster Marketing Collaborative from October 1, 2021 to October 1, 2026; and

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Whereas, because Public Law 2021, chapter 58 took effect October 18, 2021, the law that established the Maine Lobster Marketing Collaborative was repealed; and

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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,'

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

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'Sec. 1. 5 MRSA §12004-H, sub-§14-A is enacted to read:

27

14-A.

28

Maine Lobster Marketing Collaborative \$55 Per Diem Plus 12 MRSA §6455-A
Expenses

29

30

This subsection is repealed December 31, 2026.

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Sec. 2. 12 MRSA §6455-A is enacted to read:

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§6455-A. Maine Lobster Marketing Collaborative

33

1. Collaborative established; purpose. The Maine Lobster Marketing Collaborative, established in Title 5, section 12004-H, subsection 14-A and referred to in this subchapter

34

HOUSE AMENDMENT

1 as "the collaborative," is created to promote and market actively Maine lobsters in state,
2 regional, national and international markets. The collaborative shall draw upon the
3 expertise of the Maine lobster industry and established private marketing firms to identify
4 market areas that will provide the greatest return on the investments made by lobster license
5 holders and undertake those media or promotional efforts that represent the most cost-
6 effective use of a limited promotional budget. The collaborative shall remain responsive to
7 the Maine lobster industry, conduct its business in a public manner and undertake
8 marketing efforts that promote the quality and full utilization of the product and the unique
9 character of the coastal Maine lobster fishery.

10 **2. Collaborative is a public instrumentality.** The collaborative is established as a
11 public instrumentality serving a public purpose. Accordingly:

12 A. Employees of the collaborative may not be construed to be state employees for any
13 purpose, including the state civil service provisions of Title 5, Part 2 and Title 5,
14 chapter 372 and the state retirement system provisions of Title 5, Part 20;

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

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

19 (1) All meetings and records of the collaborative are subject to the provisions of
20 Title 1, chapter 13, subchapter 1, except as provided in subsection 3. The
21 commissioner and those members of the Legislature appointed to serve on the joint
22 standing committee of the Legislature having jurisdiction over marine resources
23 matters have access to all material designated confidential by the collaborative;

24 (2) Members of the collaborative are governed by the conflict of interest provisions
25 set forth in Title 5, section 18; and

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

29 **3. Market studies and promotional plans; proprietary information.** Information
30 provided to or developed by the collaborative and included in a promotional plan or market
31 study is public unless the collaborative determines that it contains proprietary information.
32 For the purposes of this subsection, "proprietary information" means information that is a
33 trade secret or production, commercial or financial information the disclosure of which
34 would impair the competitive position of the collaborative or the person submitting the
35 information and would make available information not otherwise publicly available.

36 **4. Collaborative members; appointments; terms.** The collaborative consists of 11
37 voting members, 9 appointed by the commissioner as follows:

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

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B. Three individuals:

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

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

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

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

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

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

6. Executive committee. The collaborative shall establish an executive committee of no fewer than 5 members, who are appointed by a majority vote of the collaborative. The collaborative shall specify in its bylaws when the executive committee may act on behalf of the collaborative with regard to oversight of collaborative staff, daily operations of the collaborative and addressing unexpected expenditures to be made by the collaborative. The bylaws must specify what constitutes a quorum of the executive committee and how many votes are necessary for the executive committee to take a valid action. In addition to any other restrictions adopted by the collaborative, the executive committee may not act on behalf of the collaborative to:

A. Adopt or amend an annual budget;

B. Adopt or amend an annual marketing plan;

C. Hire or terminate the employment of the executive director of the collaborative; or

D. Amend the bylaws of the collaborative.

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

8. Employees. The collaborative shall hire an executive director and may hire staff as needed to perform its duties. Employees of the collaborative serve at the pleasure of the collaborative. The salary and benefits for employees of the collaborative are determined by the collaborative.

9. Powers and duties. The collaborative may:

- 1 A. Undertake promotional marketing programs in cooperation with the lobster
2 industry;
- 3 B. Promote national and international markets for lobsters harvested or processed in
4 the State;
- 5 C. Provide material and technical assistance to persons seeking to market lobsters
6 harvested or processed in the State;
- 7 D. Conduct other efforts as determined necessary to increase the sales of lobsters
8 harvested or processed in the State;
- 9 E. Market and sell goods directly related to the functions of the collaborative and
10 deposit all proceeds in the fund;
- 11 F. Make expenditures from the fund to carry out the purposes of this subchapter. Money
12 in the fund may be used only for the following purposes:
- 13 (1) Promotion, advertising and marketing development. The collaborative may
14 implement programs and activities to promote, advertise and develop markets for
15 lobster and make or enter into contracts with any local, state, federal or private
16 agency, department, firm, corporation, entity or person for those purposes; and
- 17 (2) The hiring of staff and the payment of compensation for employees, payment
18 of per diem and reimbursement of expenses for members pursuant to Title 5,
19 section 12004-H, subsection 14-A and payment of administrative and overhead
20 costs associated with the business of the collaborative; and
- 21 G. Accept and deposit in the fund additional funding from any source, public or private.
- 22 **10. Lobster Promotion Fund established.** The Lobster Promotion Fund, referred to
23 in this subchapter as "the fund," is established to carry out the purposes of this subchapter.
24 The department shall pay to the fund all money appropriated or received by the department
25 for the purposes of this subchapter, except that the department may retain funds necessary
26 to reimburse the department for the actual cost of collecting the license surcharges
27 established in subsection 11. The fund is capitalized from the annual surcharges set out in
28 subsection 11.
- 29 **11. License surcharge assessed.** The fund is capitalized from annual surcharges
30 assessed on licenses issued by the department as follows.
- 31 A. For a Class I lobster and crab fishing license held by a person 18 to 69 years of age,
32 the surcharge is \$165.25.
- 33 B. For a Class II lobster and crab fishing license, the surcharge is \$330.50, except that
34 for a license holder 70 years of age or older, the surcharge is \$165.
- 35 C. For a Class III lobster and crab fishing license, the surcharge is \$480.75, except that
36 for a license holder 70 years of age or older, the surcharge is \$240.
- 37 D. For a nonresident lobster and crab landing permit, the surcharge is \$480.75.
- 38 E. For a wholesale seafood license with a lobster permit if the license holder holds no
39 supplemental wholesale seafood license with a lobster permit or for a lobster
40 transportation license if the license holder holds no supplemental lobster transportation
41 license, the surcharge is \$1,200.

1 F. Surcharges for supplemental wholesale seafood licenses with lobster permits or
2 supplemental lobster transportation licenses are as follows:

3 (1) For up to 2 supplemental wholesale seafood licenses with lobster permits or
4 supplemental lobster transportation licenses, the surcharge is \$1,800;

5 (2) For 3 to 5 supplemental wholesale seafood licenses with lobster permits or
6 supplemental lobster transportation licenses, the surcharge is \$2,400; and

7 (3) For 6 or more supplemental wholesale seafood licenses with lobster permits or
8 supplemental lobster transportation licenses, the surcharge is \$3,000.

9 G. For a lobster processor license, the surcharge is \$1,000 if less than 1,000,000
10 pounds of raw product is processed and \$4,000 if 1,000,000 pounds or more of raw
11 product is processed.

12 A person holding more than one of the following licenses is assessed only the highest
13 applicable surcharge for those licenses under this subsection: a wholesale seafood license
14 with a lobster permit, a supplemental wholesale seafood license with a lobster permit, a
15 lobster transportation license or a supplemental lobster transportation license.

16 The commissioner shall review annually the surcharges established in this subsection and
17 recommend changes to the joint standing committee of the Legislature having jurisdiction
18 over marine resources matters, which after receiving the recommendations may report out
19 a bill to the Legislature to adjust the surcharges.

20 The Treasurer of State shall hold all surcharges assessed by this subsection in the fund and
21 invest all money in the fund until disbursed to the collaborative upon request of the
22 collaborative. 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 or any other source
30 must be deposited in the fund by the department and must be used by the collaborative for
31 the purposes of this subchapter.

32 12. Reports. The collaborative shall report annually on its activities and expenditures
33 to the joint standing committee of the Legislature having jurisdiction over marine resources
34 matters, to the Lobster Advisory Council established under section 6462-A and, at a
35 statewide meeting of interested license holders, to the lobster industry. The collaborative
36 shall provide notice of the date and location of the statewide meeting of license holders at
37 the time of license issuance or renewal.

38 13. Audit. An annual audit of the expenditures of the collaborative must be performed.
39 The collaborative may contract with the Office of the State Auditor or with a private sector
40 accounting firm to conduct the audit. The collaborative shall report the results of that audit
41 to the joint standing committee of the Legislature having jurisdiction over marine resources
42 matters. If the annual audit is performed by the Office of the State Auditor, the collaborative
43 shall reimburse the department for its costs to conduct that audit.

1 **14. Repeal.** This section is repealed December 31, 2026.

2 **Sec. 3. 12 MRSA §6465, sub-§2, ¶G,** as amended by PL 2013, c. 309, §3, is further
3 amended to read:

4 G. The Maine Lobster Marketing Collaborative under section ~~6455~~ 6455-A;

5 **Sec. 4. 29-A MRSA §456-A, sub-§3,** as amended by PL 2013, c. 309, §4, is further
6 amended to read:

7 **3. Design.** The Secretary of State, in consultation with the Maine Lobster Marketing
8 Collaborative under Title 12, section ~~6455~~ 6455-A, shall determine a design for the lobster
9 special registration plates. The joint standing committee of the Legislature having
10 jurisdiction over transportation matters shall review the final design prior to manufacture
11 of the plates. The Secretary of State shall issue upon request lobster plates that are also
12 vanity plates. Lobster plates are issued in accordance with the provisions of this section
13 and section 453.

14 **Sec. 5. PL 2021, c. 58** is repealed.

15 **Sec. 6. Transition.** The following provisions govern the reestablishment of the
16 Maine Lobster Marketing Collaborative.

17 **1. Members, officers and executive committee members.** Notwithstanding the
18 Maine Revised Statutes, Title 12, section 6455-A:

19 A. Members of the Maine Lobster Marketing Collaborative appointed pursuant to Title
20 12, former section 6455, subsection 1-C serving on September 30, 2021 continue to
21 serve until the completion of their terms. Their successors are appointed as provided
22 in Title 12, section 6455-A, subsection 4;

23 B. Officers of the Maine Lobster Marketing Collaborative elected pursuant to Title 12,
24 former section 6455, subsection 2-A serving on September 30, 2021 continue to serve
25 until the completion of their terms. Their successors are elected as provided in Title
26 12, section 6455-A, subsection 5; and

27 C. Members of the executive committee of the Maine Lobster Marketing Collaborative
28 appointed pursuant to Title 12, former section 6455, subsection 2-B serving on
29 September 30, 2021 continue to serve until the completion of their terms. Their
30 successors are appointed as provided in Title 12, section 6455-A, subsection 6.

31 **Sec. 7. Retroactivity.** This Act applies retroactively to October 1, 2021.'

32 Amend the bill by adding before the summary the following:

33 **'Emergency clause.** In view of the emergency cited in the preamble, this legislation
34 takes effect when approved.'

35 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
36 number to read consecutively.

37 **SUMMARY**

38 This amendment reestablishes the Maine Lobster Marketing Collaborative. The
39 amendment is retroactive to October 1, 2021 and takes effect immediately to ensure that
40 the work and funding of the collaborative is not interrupted. The amendment repeals Public

1 Law 2021, chapter 58 to prevent a statutory conflict and it provides transition provisions
2 relating to the appointment of collaborative members and executive committee members
3 and the election of executive officers.

4 During the First Regular Session of the 130th Legislature, the House of Representatives
5 voted to enact Legislative Document 338, An Act To Amend the Law Governing the Maine
6 Lobster Marketing Collaborative. Legislative Document 338 extended the repeal date of
7 the law that established the Maine Lobster Marketing Collaborative to October 1, 2026.
8 The First Regular Session of the 130th Legislature adjourned before the Senate voted on
9 Legislative Document 338. During the First Special Session of the 130th Legislature, the
10 Senate voted to enact Legislative Document 338 and the bill was signed by the Governor
11 on May 5, 2021. The Legislature adjourned the First Special Session on July 19, 2021 and
12 Public Law 2021, chapter 58 was effective October 18, 2021, 17 days after the repeal date
13 in the statute.

14 SPONSORED BY: Jay McCreight (RMF)
15 (Representative MCCREIGHT, J.)

16 TOWN: Harpswell

FISCAL NOTE REQUIRED
(See attached)



130th MAINE LEGISLATURE

LD 391

LR 1797(02)

An Act To Amend the Laws Regarding Marine Resources

Fiscal Note for House Amendment "A" to Original Bill

Sponsor: Rep. McCreight of Harpswell

Fiscal Note Required: Yes

(H-751)

Fiscal Note

Corrects unintentional repeal - Maine Lobster Marketing Collaborative

Fiscal Detail and Notes

The Maine Lobster Marketing Collaborative was unintentionally repealed on October 1, 2021 because the legislation to postpone that repeal (LD 338) was not effective until October 18, 2021. This amendment reestablishes the collaborative and is retroactive back to October 1, 2021. As the allocations related to the collaborative were never deallocated by legislation and still exist in the accounting system, no additional allocations are required now to allow the collaborative to continue to function. The new repeal date is set at December 31, 2026.