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Public Law
123rd Legislature
Second Regular Session

Chapter 606
H.P. 1422 - L.D. 2038

**An Act To Establish the Shellfish Advisory Council
and To Improve the Process of Reopening Clam Flats**

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

Whereas, the establishment of a shellfish advisory council is paramount for the proper management of Maine's shellfish resources to ensure the safe consumption of shellfish and the health of the shellfish industry; 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:

PART A

Sec. A-1. 5 MRSA §12004-I, sub-§57-G is enacted to read:

57-G.

<u>Marine</u> Resources	<u>Shellfish</u> Advisory Council	<u>Expenses</u> Only	<u>12 MRSA</u> §6038
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Sec. A-2. 12 MRSA §6038 is enacted to read:

§ 6038. Shellfish Advisory Council

1. Appointment; composition. The Shellfish Advisory Council, referred to in this section as "the council" and established by Title 5, section 12004-I, subsection 57-G, consists of 13 members who are appointed by the commissioner as follows:

- A. Four members who are commercial shellfish license holders, at least 3 of whom must be primarily soft-shell clam harvesters. In making the appointments under this paragraph, the commissioner shall consider up to 6 recommendations from associations representing the interests of persons who harvest shellfish commercially;
- B. Two members who are shellfish aquaculture lease holders. In making the appointments under this paragraph, the commissioner shall consider up to 3 recommendations from associations representing the interests of persons who raise shellfish under aquaculture leases;
- C. One member who represents the interests of municipalities with wastewater treatment systems;
- D. Two members who are licensed wholesale seafood dealers who have been issued a shellfish sanitation certificate pursuant to section 6856, subsection 1. In making the appointments under this paragraph, the commissioner shall consider up to 3 recommendations from associations representing the interests of persons who buy and sell shellfish;
- E. One public member with knowledge of and interest in coastal water quality;
- F. Two members who are municipal shellfish wardens. In making the appointments under this paragraph, the commissioner shall solicit and consider up to 3 recommendations for these 2 appointments from associations representing the interests of persons who protect and help manage municipal shellfish resources; and
- G. One member who has been issued a shellfish depuration certificate under section 6856, subsection 3.

The commissioner shall make appointments so that the composition of the council reflects a geographic distribution along the coast of the State.

2. Purpose. The council shall make recommendations to the commissioner and the joint standing committee of the Legislature having jurisdiction over marine resources matters concerning:

- A. How best to utilize state agencies, municipal governments, the shellfish industry and citizen groups to make improvements to and maintain the quality of the State's coastal waters and to expedite the opening of closed shellfish flats; and
- B. Matters of interest to the State's shellfish industry, including, but not limited to, shellfish resource management, public health protection and the activities and recommendations of a multistate organization that promotes shellfish sanitation.

The council is responsible for bringing forward to the commissioner matters of concern to the shellfish industry and for assisting the commissioner with the dissemination of information to members of the shellfish industry.

3. Term. The term of a member appointed to the council is 3 years, except that a vacancy during an unexpired term must be filled in the same manner as for the original member for the unexpired portion of the member's term. A member may not serve more than 2 consecutive terms.

4. Officers. The officers of the council are the chair, vice-chair and secretary. The term of the officers is one year. The council shall elect a member of the council for each officer position at the first regular meeting of each year.

5. Meeting. The council shall meet at least once a year. It may also meet at other times at the call of the chair or the commissioner. In advance of a meeting of a multistate organization that promotes shellfish sanitation, the council shall meet to discuss matters of interest to the shellfish industry, the department and the multistate organization and to make recommendations as necessary.

6. Compensation. Council members are entitled to expenses according to Title 5, chapter 379, which are paid from the Shellfish Fund established in section 6651.

Sec. A-3. 12 MRSA §6651, sub-§2, as amended by PL 1987, c. 328, §2, is further amended to read:

2. Uses of fund. The commissioner may expend the money in the Shellfish Fund for management, enforcement, restoration, development and conservation of shellfish and mussels in the intertidal zone or coastal waters and for the costs associated with the Shellfish Advisory Council established by Title 5, section 12004-I, subsection 57-G.

Sec. A-4. Shellfish Advisory Council; staggered terms. Notwithstanding the Maine Revised Statutes, Title 12, section 6038, subsection 3, the Commissioner of Marine Resources for the original appointment of members to the Shellfish Advisory Council shall designate the first 3 appointments for one-year terms, the next 4 appointments for 2-year terms and any other appointments for 3-year terms. An initial term of one or 2 years may not be considered a full term for purposes of limiting the number of terms for which a member may serve.

PART B

Sec. B-1. Implementation of recommendations. The Department of Marine Resources, working with the federal Food and Drug Administration and interested parties, in consultation with the Shellfish Advisory Council under the Maine Revised Statutes, Title 12, section 6038, shall implement in an orderly fashion all recommendations of the review conducted pursuant to Resolve 2007, chapter 82; except that, for the recommendation of the review requiring additional staff to comply with the National Shellfish Sanitation Program model ordinance requirements, the Department of Marine Resources shall report by January 15, 2009 with a plan for implementing that recommendation to the joint standing committee of the Legislature having jurisdiction over marine resources matters.

Sec. B-2. Water quality test projects. The Department of Marine Resources shall undertake 2 or more projects within 18 months of the effective date of this Act under which a municipality contracts with a private laboratory, certified by the department, to conduct water quality tests. The department shall as part of the certification process request and review the past practices or service record for an entity that seeks to be certified by the department.

Sec. B-3. Report on test projects. The Department of Marine Resources shall submit a report by May 1, 2009 to the joint standing committee of the Legislature having jurisdiction over marine resources matters on the progress of any pilot water quality test project undertaken pursuant to section 2 of this Part. The committee may submit legislation based upon the report to the First Regular Session of the 124th Legislature.

Sec. B-4. Report. On or before February 15, 2009, the Shellfish Advisory Council under the Maine Revised Statutes, Title 12, section 6038 and the Department of Marine Resources shall report to the joint standing committee of the Legislature having jurisdiction over marine resources matters on all the activities the council and the department have undertaken pursuant to this Act, including the results of projects and the progress in implementing all of the recommendations made pursuant to Resolve 2007, chapter 82, section 4. In addition the Shellfish Advisory Council shall report on its overall structure and the appropriateness of the appointment process for the council.

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

Effective April 14, 2008.