

**TESTIMONY OF
MICHAEL J. ALLEN, ASSOCIATE COMMISSIONER FOR TAX POLICY
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES**

Before the Joint Standing Committee on Taxation
Hearing Date: *April 23, 2025, Wednesday at 3:00 P.M.*

LD 1386 – *“An Act to Provide Emergency One-time Relief from the Wild Blueberry Tax for Sellers in Maine and Partial Relief for Processors and Shippers”*

Senator Grohoski, Representative Cloutier, and members of the Taxation Committee – good afternoon, my name is Michael Allen, Associate Commissioner for Tax Policy in the Department of Administrative and Financial Services. I am testifying at the request of the Administration Neither For Nor Against LD 1386, *“An Act to Provide Emergency One-time Relief from the Wild Blueberry Tax for Sellers in Maine and Partial Relief for Processors and Shippers.”*

The text of this bill was brought forward in LD 2256 in the 131st Legislature, heard by the Joint Standing Committee on Agriculture, Conservation and Forestry, with the intent to provide relief to Maine growers of wild blueberries. This testimony for LD 1386 is Neither For Nor Against based on the assumption that this Committee, considering constitutional concerns with the bill as drafted, would amend LD 1386 in the same manner as the ACF Committee amended LD 2256 in the last Legislative Session.

Current law imposes a tax at the rate of 1.5¢ per pound of wild blueberries either shipped unprocessed out of Maine or processed in Maine. The processor or shipper files the Blueberry Tax return due annually November 1, and remits the tax; however, the processor or shipper charges and collects half of the tax from the seller of the wild blueberries that are either in turn processed in Maine or exported,

unprocessed, from Maine. All receipts of the Blueberry Tax are transferred to the Wild Blueberry Commission of Maine to be used for all activities of the Commission, including implementation of programs and activities to promote wild blueberries; supplementing research conducted by the University of Maine System related to improving methods of growing, harvesting, and marketing wild blueberries; and administration and other activities related to the economic viability of the Maine wild blueberry industry.

LD 1386 would prohibit processors and/or shippers from collecting the tax from sellers on wild blueberries that are harvested in Maine for the 2025 calendar year. However, processors and shippers would still be responsible for collecting the seller's half of the tax on blueberries harvested *outside* the state. This would result in .75¢ per pound of tax due on blueberries harvested in Maine, but 1.5¢ per pound of tax due on blueberries harvested outside of Maine. This bill would treat in-state products more favorably than out-of-state products and thus raises constitutional concerns under the U.S. Constitution's Interstate and Foreign Commerce Clauses.

Following DAFS testimony on LD 2256 in the 131st Legislature, that bill was amended by the ACF Committee such that the bill did not impose the .75¢ per pound of tax from sellers of *all* wild blueberries, regardless of whether the wild blueberries were harvested in or outside the State, thereby resolving the constitutional concerns.

There is an existing exemption from the Blueberry Tax for wild blueberries grown on tribal land; this exemption is on a different legal footing and does not give rise to the same constitutional concerns.

Turning to other technical concerns, the bill states that for 2025 the processor or shipper responsible for reporting blueberry tax “may not charge or collect any portion of the tax from a seller of wild blueberries harvested in the State.” The phrase “any portion” should be deleted from the bill, as there is no discretion for a retailer to charge or collect less than the amount of tax otherwise due. Finally, it should be noted that although this bill may apply retroactively, effective January 1, 2025, it may not entitle taxpayers to refunds because the annual Blueberry Tax return and payment are not due until November 1, 2025, after the wild blueberry season ends.

The Administration looks forward to working with the Committee on the bill; representatives from MRS will be here for the Work Session to provide additional information and respond in detail to the Committee’s questions.