

MAINE STATE LEGISLATURE

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(EMERGENCY)
(NEW DRAFT OF H.P.1276, L.D.1746)
(NEW TITLE)
SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2522

H.P. 1842 House of Representatives, March 15, 1988
Reported by Representative NUTTING from the Committee on
Agriculture and printed under Joint Rule 2.

EDWIN H. PERT, Clerk
Original bill sponsored by Representative LISNIK of
Presque Isle. Cosponsored by Representatives NUTTING of
Leeds, RIDLEY of Shapleigh, and Senator PERKINS of Hancock.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-EIGHT

1 AN ACT to Promote Harmony between
2 Agriculture and Adjacent Development and to
3 Protect the Public Health, Safety and
4 General Welfare.
5

6 Emergency preamble. Whereas, Acts of the
7 Legislature do not become effective until 90 days
8 after adjournment unless enacted as emergencies; and

1 Whereas, with the rapid pace of land development
2 in the State, it is desirable to take action as soon
3 as possible to minimize the incompatibility between
4 agricultural uses and the development of adjacent
5 areas;

6 Whereas, the public health, safety and general
7 welfare require that the Legislature move immediately
8 to impose reasonable restrictions on residential and
9 certain other types of land development which adjoins
10 farmland on which will take place chemical
11 applications and related agricultural activities that
12 are incompatible with such development; and

13 Whereas, in the judgment of the Legislature, these
14 facts create an emergency within the meaning of the
15 Constitution of Maine and require the following
16 legislation as immediately necessary for the
17 preservation of the public peace, health and safety;
18 now, therefore,

19 Be it enacted by the People of the State of Maine as
20 follows:

21 7 MRSA c. 2-A is enacted to read:

22 CHAPTER 2-A

23 AGRICULTURAL LAND AND ADJACENT DEVELOPMENT

24 §41. Purpose

25 The Legislature finds that the public health,
26 safety and welfare is threatened when land immediately
27 adjacent to farmland is developed for human
28 habitation. This development and the uses incident to
29 it are inconsistent with various activities commonly
30 engaged in on farmland, such as the application of
31 agricultural chemicals. The Legislature declares that
32 the purposes of this chapter are:

33 1. Health impacts. To minimize any health or
34 other adverse impacts which common agricultural
35 activities may have on the occupants of land adjacent
36 to farmland;

1 2. Agricultural activities. To protect the
2 ability of farmers to engage in common agricultural
3 activities with minimal potential for causing harm to
4 their neighbors;

5 3. Full land use. To permit the owners of both
6 farmland and adjacent land to maintain to the highest
7 degree possible the full use and enjoyment of their
8 land, but to recognize the importance of agriculture
9 to the economic and social welfare of the State;

10 4. Production capacity. To conserve agricultural
11 production capacity for present needs and for the
12 future;

13 5. Harmony. To promote harmony between
14 agriculture and adjacent nonfarm development;

15 6. Responsibility. To recognize the mutual
16 responsibility of agricultural operators and persons
17 siting nonfarm development adjacent to farmland to
18 take steps to accommodate each other's concerns and
19 the public interest;

20 7. Public Records. For purposes of administering
21 this regulatory program, to create in each
22 municipality a register of farmland which will provide
23 a public record and enable disclosure to the public
24 regarding the existence of active farming operations
25 in the community which may be incompatible with
26 residential development on lands in the immediate
27 vicinity; and

28 8. Distance. When farmland is registered for the
29 application of agricultural chemicals, to provide some
30 accomodation for that activity and for adjacent
31 nonfarm developments by distancing them from each
32 other and by providing a reasonable setback for new
33 residential and other particularly sensitive types of
34 development from actively used agricultural land.

35 §42. Definitions

1 As used in this chapter, unless the context
2 otherwise indicates, the following terms have the
3 following meanings.

4 1. Abutting land. "Abutting land" means real
5 estate which shares a common boundary, or portion of a
6 boundary, with registered farmland. If a road forms a
7 common boundary with registered farmland, the road
8 shall be considered part of the land adjoining the
9 road opposite the registered farmland and the land
10 opposite the registered farmland will be considered
11 abutting land.

12 2. Agricultural chemicals. "Agricultural
13 chemicals" means fungicides, insecticides, herbicides,
14 and other pesticides.

15 3. Commercial farming. "Commercial farming"
16 means the production of any "farm product," as defined
17 by Title 17, section 2805, with the intent that that
18 farm product be sold or otherwise disposed of to
19 generate income.

20 4. Farmland. "Farmland" means any tract or
21 tracts of land, the use of which is commercial farming
22 and which meets both of the following criteria:

23 A. It consists of 5 or more contiguous acres; and

24 B. It has produced a gross income which averages
25 at least \$300 per acre for at least 3 of the
26 previous 5 calendar years.

27 5. Inconsistent development or use.
28 "Inconsistent development or use":

29 A. Means development or use of land which:

30 (1) Is initiated after the registration of
31 the abutting farmland under this chapter;

32 (2) Takes place upon abutting land within
33 150 feet of registered farmland to which
34 agricultural chemicals are applied or
35 intended to be applied, as stated in the

1 registration; and

2 (3) Is of any of the following kinds or is
3 used for any of the following purposes:

4 (a) Residential buildings;

5 (b) Public and private wells, drinking
6 water springs and water supply intake
7 points;

8 (c) School buildings and any
9 playgrounds, athletic fields or other
10 school facilities designed for use by
11 children in the vicinity of school
12 buildings;

13 (d) Commercial establishments
14 dispensing or selling food; and

15 (e) Public and commercial campgrounds
16 and picnic areas; and

17 B. Does not include any:

18 (1) Expansion of an existing use; provided
19 that, when the existing use includes a
20 building, the expansion does not increase the
21 total floor area of the building by more than
22 100% and the expansion is no closer to the
23 registered farmland than is the existing
24 building; or

25 (2) Replacement or reconstruction of an
26 existing building or structure which is
27 damaged or destroyed by fire or other
28 casualty and which is replaced or
29 reconstructed within 2 years of such damage
30 or destruction.

31 §43. Registration

32 1. Filing. An owner of farmland may register, in
33 the office of the municipality or municipalities in

1 which the farmland is located, all or any designated
2 portion of the farmland upon which the owner applies
3 or intends to apply agricultural chemicals. The
4 registration shall occur between April 15, 1988, and
5 May 1, 1988, or January 15th and February 1st of 1989,
6 1990 or 1991. In the event there is no official
7 municipal office, the registration shall take place
8 with the town assessor. In case the farmland is
9 located in the unorganized territory, the registration
10 shall take place in the office of the county in which
11 the farmland is located. A registration made under
12 this chapter remains effective until withdrawn in
13 accordance with subsection 4.

14 2. Contents and purpose. The purpose of a
15 registration is to provide a public record, maintained
16 by each municipality, of the existence of actively
17 used farmland, which will require public disclosure
18 under section 45 and the setback of incompatible
19 development under section 46. A registration shall
20 identify the name and address of the landowner, the
21 types of products which are grown on the farmland to
22 be registered, the acreage of farmland to be
23 registered and the gross income of the farmland for
24 each of the previous 5 years. The registration shall
25 include a copy of the municipal tax map, where
26 available, clearly showing the location of the
27 farmland, together with a statement of the tax parcel
28 number or numbers which include the farmland at issue
29 and a copy of the registrant's deed. The registration
30 shall also include the names and addresses of each
31 abutting landowner to whom notice is being sent
32 pursuant to subsection 3. The registration shall
33 further include a statement of the owner's intention
34 to apply or permit the application of agricultural
35 chemicals upon the registered farmland, together with
36 a statement of the type or types of chemicals which
37 will be applied. The department shall prepare
38 registration forms including these contents and such
39 other informational requirements as the department
40 deems necessary for the effective operation of this
41 program. These forms shall be used by municipalities
42 and registrants.

43 3. Notice. The owner registering farmland shall
44 notify all abutting landowners, as indicated on

1 municipal or state tax records, of the registration by
2 sending by registered mail to abutting landowners a
3 copy of the registration information filed pursuant to
4 subsection 1.

5 4. Withdrawal from registry. An owner of
6 farmland must withdraw the farmland from registration
7 if it no longer qualifies under this chapter. An
8 owner of registered farmland may withdraw the farmland
9 from registration by filing a written notice of
10 withdrawal in the municipal office or other office in
11 which the farmland was registered. Any abutters shall
12 be notified as provided in subsection 3.

13 5. Amendment of registration. Amendments or
14 withdrawals from land registered may be made during
15 the periods April 15, 1988, to May 1, 1988, or January
16 15th to February 1st of each year thereafter. Any
17 abutters shall be notified as provided in subsection 3.

18 6. Municipal registry. Each municipality shall
19 establish and maintain a registry of farmland which
20 must be current by June 15, 1988, and annually by
21 March 15th thereafter, to include registrations,
22 amendments and withdrawals. The registry shall be
23 operated in a manner that makes the information
24 reasonably accessible to interested persons and
25 effective to inform them of the existence in the
26 registry of particular farmland.

27 7. Fees. A municipality may charge a fee for the
28 filing of registrations which shall not exceed \$25 for
29 each registration. The municipality may refuse to
30 file a registration until the fee is paid.

31 §44. Proceedings

32 An abutting landowner or the municipality may
33 institute any of the following proceedings with the
34 zoning board of appeals, or, if none, with the
35 municipal body which hears zoning appeals:

36 1. Proceeding to determine eligibility of
37 farmland for registration. If such a proceeding is
38 initiated, the owner of the farmland shall have the
39 burden

1 of proving to the municipal body that the farmland
2 meets the requirements for registration under this
3 chapter. The proceeding shall be commenced within 15
4 days after receipt of notice of registration.
5 Farmland registration shall not be effective until the
6 expiration of 15 days after receipt of notice by the
7 municipality and abutting owners as required in this
8 chapter or, if review proceedings are initiated under
9 this paragraph upon the decision of the municipality
10 upholding the registration.

11 2. Proceedings to determine continued eligibility
12 of registered farmland. Upon petition of any abutting
13 owner or of the municipality, the owner of registered
14 farmland shall have the burden of proving to the
15 municipal body that the registered farmland continues
16 to meet the requirements for registration under this
17 chapter. The proceedings may be initiated only once
18 in any 2-year period.

19 3. Appeals. A decision made by a municipal body
20 under this section may be appealed by any aggrieved
21 party as allowed by law for appeals of decisions made
22 by a zoning board of appeals.

23 4. Assistance from department. Upon request of
24 any municipality, the department shall provide
25 technical assistance in connection with the
26 determinations the municipality must make under this
27 section.

28 §45. Disclosure required

29 Provided proper notification was given at the time
30 the farmland was first registered, every seller of
31 real estate and every agent of a seller shall disclose
32 in writing in a purchase and sale agreement for the
33 real estate or, if there is no such agreement, prior
34 to the sales transaction, the existence of registered
35 farmland abutting any boundary or portion of a
36 boundary of the real estate offered for sale.

37 The existence of the registered farmland shall
38 also be stated on any declaration of value, as

1 provided pursuant to Title 36, section 4641-D,
2 covering the transfer of title to abutting land.

3 §46. Prohibited acts

4 1. Inconsistent development. No owner of
5 abutting land may undertake or allow any inconsistent
6 development upon or use of land within 150 feet of
7 properly registered farmland.

8 2. Building permit. Except as provided in
9 section 47, no municipality may issue a building or
10 use permit allowing any development which is
11 prohibited under subsection 1.

12 3. Exemption. This section shall not apply to
13 any lot or parcel of land which, together with any
14 adjoining lot or parcel in the same ownership, was one
15 acre or less in area as of January 1, 1988.

16 §47. Variance

17 An owner of real estate may apply to the municipal
18 zoning board of appeals or other municipal body
19 hearing zoning appeals, or, in the case of areas
20 within its jurisdiction, the Maine Land Use Regulation
21 Commission, for a variance permitting an inconsistent
22 development upon or use of land which is otherwise
23 prohibited under section 46. Such a variance shall be
24 issued only upon the finding that the criteria set
25 forth in Title 30, section 4963, subsection 3, for
26 variances are satisfied.

27 §48. Enforcement and penalties

28 1. Enforcement. Proceedings to enforce any
29 provision of this chapter may be brought by a
30 municipality, county or any aggrieved person. Such
31 proceedings may be initiated in accordance with the
32 provisions of the Maine Rules of Civil Procedure, Rule
33 80B, as applicable.

34 2. Remedies. Any violation of this chapter shall
35 be punishable as follows:

1 A. In the case of failure to disclose the
2 existence of registered farmland as provided by
3 section 45, any contract or other agreement for
4 the purchase and sale of real estate may be
5 declared void by the buyer up until the passing of
6 title to the buyer. If the buyer declares the
7 contract or agreement void under the provisions of
8 this paragraph, any money deposited or paid by the
9 buyer to the seller or the agent of the seller
10 shall be returned to the buyer.

11 B. Any inconsistent development upon or use of
12 land in violation of this chapter may be removed
13 or discontinued by order of the court in a
14 proceeding to enforce this chapter, and the court
15 may fashion any other appropriate equitable remedy
16 consistent with the purposes of this chapter.

17 C. Any person who violates any provisions of this
18 chapter shall, in addition to the other provisions
19 of this section, be subject to the civil penalties
20 and enforcement procedures for land use laws and
21 ordinances in Title 30, section 4966.

22 §49. Other laws not affected

23 Nothing in this chapter may affect the legal
24 rights, remedies or liabilities of persons arising out
25 of negligence or other wrongful acts or omissions
26 involving the use of pesticides or other agricultural
27 chemicals.

28 Emergency clause. In view of the emergency
29 cited in the preamble, this Act shall take effect when
30 approved.

31 STATEMENT OF FACT

32 This is a new draft of L.D. 1746, which was held
33 over from the First Regular Session. It was prepared
34 by the Department of Agriculture, Food and Rural
35 Resources, a representative of the Department of the
36 Attorney General, a member of the Joint Standing
37 Committee on Agriculture and other interested parties.

1 The purpose of this new draft is to protect public
2 health and to promote harmony between commercial
3 agriculture and adjacent nonfarm development. By
4 registering land at the municipal office, the farmer
5 creates notice for any future neighboring landowner
6 that agricultural chemicals will be applied to the
7 registered farmland. Real estate agents shall be
8 required to disclose the existence of the registered
9 farmland to buyers of abutting property.

10 Land within 150 feet of registered farmland may
11 not be developed in a manner, such as new residential
12 buildings, drinking water wells and school facilities,
13 which is inconsistent with the public health or is
14 otherwise incompatible with agricultural uses in the
15 immediate vicinity. Other uses of abutting land, such
16 as for lawns, driveways or other roads and gardens,
17 are not being restricted. This new draft does not
18 affect grandfathered, preexisting uses of abutting
19 land and does not affect the rights of farmers to
20 engage in generally accepted agricultural practices.

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