

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 697, L.D. 949, Bill, "An Act to Clarify the Farmland Adjacency Law"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

Sec. 1. 7 MRSA c. 2-B is enacted to read:

CHAPTER 2-B

REGISTRATION OF FARMLAND

§51. Purpose

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

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

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

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

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

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

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

7. Public records. For purposes of administering this regulatory program, to create in each municipality and each county registry of deeds a register of farmland which will provide a public record and enable disclosure to potential buyers of real estate and the public regarding the existence of active farming operations in the community that may be incompatible with residential development on lands in the immediate vicinity; and

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

§52. Definitions

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

1. Abutting land. "Abutting land" means real estate which shares a common boundary, or portion of a boundary, with land that is held in common ownership with land registered or being considered for registration under this chapter when the abutting real estate is within 100 feet of the land registered or being considered for registration. Abutting land includes, but is not limited to, land separated by a road and within 100 feet of land that is held in common ownership with land registered or being considered for registration under this chapter.

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

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

1 4. Farmland. "Farmland" means any tract or tracts of land
2 used for commercial farming:

3 A. That consists of 5 or more contiguous acres;

5 B. That has produced a gross income averaging no less than
7 \$300 per acre for 3 or more of the previous 6 calendar years;

9 C. Where use of agricultural chemicals has occurred; and

11 D. That includes only the land on which the crop is
12 produced.

13 "Farmland" does not include land used for woodlots, Christmas
15 tree production, homes, farm buildings, roads, pastures, lawns or
17 any area covered with noncrop vegetation that borders abutting
18 land.

19 5. Inconsistent development or use. "Inconsistent
20 development or use":

21 A. Means development or use of land which:

23 (1) Is initiated after the registration of the
25 abutting farmland under this chapter;

27 (2) Takes place upon abutting land within 100 feet of
28 registered farmland; and

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

33 (a) Residential buildings;

35 (b) Public and private wells, drinking water
36 springs and water supply intake points;

37 (c) School buildings and any playgrounds,
39 athletic fields or other school facilities
40 designed for use by children in the vicinity of
41 school buildings;

43 (d) Commercial establishments dispensing or
44 selling food; and

45 (e) Public and commercial campgrounds and picnic
47 areas; and

49 B. Does not include any:

51 (1) Expansion of an existing use, provided that, when
52 the existing use includes a building, the expansion

1 does not increase the total floor area of the building
3 by more than 100% and the expansion is no closer to the
 registered farmland than is the existing building; or

5 (2) Replacement or reconstruction of an existing
7 building or structure which is damaged or destroyed by
 fire or other casualty and which is replaced or
9 reconstructed within 2 years of such damage or
 destruction.

11 **§53-A. Eligibility**

13 Any owner who intends to register land as farmland pursuant
15 to section 53-B shall:

17 1. Application. Submit an application for review by the
19 soil and water conservation district in which the land is located
21 in accordance with the provisions of Title 12, section 6-A.
 Owners of land must apply for review by March 1st of the year in
 which registration is desired. The owner shall use an
 application provided by the department;

23 2. Notice of intent. Give notice of intent to register to
25 all abutting landowners, as indicated on municipal or state tax
27 records, by May 15th of the year in which registration is
 desired. Abutters shall be notified on a form provided by the
 department; and

29 3. Farm and Open Space Tax Law. Only register land
31 classified as farmland under the Farm and Open Space Tax Law,
 Title 36, chapter 105, subchapter X.

33 **§53-B. Registration**

35 An owner of land may register any designated portion of that
37 land which qualifies as farmland under this chapter as follows.

39 1. Registration dates. Registration shall occur between
 June 1st and June 15th of 1990 or 1991.

41 2. Place of registration. Registration shall occur in the
43 office of the municipality in which the land is located. In the
45 event there is no official municipal office, the registration
47 shall take place with the town assessor. In the event the
 farmland is located in the unorganized territory, the
 registration shall take place in the office of the county in
 which the land is located.

49 3. Effective date. A registration shall take effect 15
51 days after receipt of notice by the municipality and abutting
 owners. If review proceedings are initiated under section 54 the
 registration is effective when upheld by the municipality.

53

1 4. Duration. A registration made under this chapter
2 remains effective until withdrawn in accordance with section 53-E.

3
4 5. Registry of deeds. A copy of the municipal or county
5 registration and any withdrawal bearing the certification of a
6 notary public that the copy is a true and accurate copy shall be
7 recorded in the registry of deeds of the county in which the
8 registered farmland or any abutting property is located, and
9 shall be indexed in the Grantor index under the entry "Farmland"
10 and filed under "F."

11 §53-C. Registration contents and purpose

12
13 The purpose of a registration is to provide a public record
14 of the existence of actively used farmland in order to assist
15 public disclosure under section 55 and the setback of
16 incompatible development under section 56. A registration shall
17 include:

18 1. Landowner. The name and address of the landowner;

19
20 2. Certification. Certification by the applicable soil and
21 water conservation district that the land is farmland in
22 accordance with the provisions of Title 12, section 6-A;

23
24 3. Farm and open space classification. Notice from the
25 municipal assessor that the land is classified under Title 36,
26 chapter 105, subchapter X;

27
28 4. Crops. The types of products that are grown on the
29 farmland to be registered;

30 5. Acreage. The acreage of farmland to be registered;

31
32 6. Income. The gross income of the farmland for each of
33 the previous 6 years;

34
35 7. Maps. A copy of the municipal tax map, where available,
36 and a statement of the tax parcel number or numbers which include
37 the land at issue and any other maps needed to clearly show the
38 location of the land, including a depiction of the distance
39 between crop producing areas and any property boundary within 100
40 feet;

41 8. Deed. A copy of the registrant's deed; and

42
43 9. Abutter. The names and addresses of each abutting
44 landowner to whom notice is being sent pursuant to section 53-D.

45
46 Records of registered farmland shall be maintained by each
47 municipality and county registry of deeds in accordance with the
48

1 provisions of this chapter. Registration shall be on forms
2 provided by the department.

3

4 §53-D. Notice of registration

5

6 An owner registering land as farmland shall notify all
7 abutting landowners, as indicated on municipal or state tax
8 records, by sending to the abutting landowners a statement of
9 registration provided by the department. The owner shall send
10 notification by certified mail, return receipt requested, within
11 2 days of submitting the registration in accordance with section
12 53-B, subsection 2.

13

14 §53-E. Withdrawal

15

16 An owner of farmland shall withdraw from registration any
17 farmland that no longer qualifies for registration under this
18 chapter. An owner of registered farmland may withdraw farmland
19 from registration at any time by filing a written notice of
20 withdrawal in the office in which the farmland was registered.
21 Portions of a registered tract of farmland may be withdrawn.
22 Withdrawal from registration under this chapter does not
23 constitute withdrawal from classification under the Farm and Open
24 Space Tax Law, Title 36, chapter 105, subchapter X. Any abutter
25 shall be notified in the manner provided in section 53-D using a
26 form provided by the department.

27

28 §53-F. Municipal registry

29

30 Each municipality shall establish and maintain a registry of
31 farmland that must be current on July 15th annually and shall
32 include registrations and withdrawals. The registry shall be
33 operated in a manner that makes the information reasonably
34 accessible to interested persons and effective to inform them of
35 the existence in the registry of particular farmland.

36

37 §53-G. Fees

38

39 A municipality may charge a fee for the filing of
40 registrations which shall not exceed \$25 for each registration.
41 The municipality may refuse to file a registration until the fee
42 is paid.

43

44 §53-H. Forms

45

46 Forms provided by the department shall contain information
47 to clarify the provisions of this chapter as follows.

48

49 1. Application. The application shall include an outline
50 of the registration process and indicate the information
51 necessary for certification under section 53-A.

1 2. Registration. The registration form shall include an
2 outline of the registration process, adequate space for the
3 applicant to enter the components required by section 53-C and a
4 separate sheet of information useful in filling out the form.

5
6 3. Notice of intent. A notice of intent shall include a
7 list of permitted uses, a list of precluded uses, the name of a
8 contact person who can provide more information and an outline of
9 the registration process and the remedies available to the
10 abutter.

11
12 4. Notice to abutter. A notice to abutters shall include a
13 list of permitted uses, a list of precluded uses, an outline of
14 the remedies available to the abutter and a copy of the
15 registration form.

16
17 5. Notice of withdrawal A notice of withdrawal shall
18 include a map of the area withdrawn, a map of any area remaining
19 under registration and an indication of any impact the withdrawal
20 has on the abutter.

21 §54. Proceedings

22
23 Notwithstanding Title 30-A, sections 2691 and 4353, an
24 abutting landowner or the municipality may initiate any of the
25 following proceedings with the municipal board of appeals, or, if
26 none, with the municipal officers. The department shall be
27 notified of any action initiated under this section or section 57
28 in accordance with Title 30-A, section 4353, subsection 3.

29
30 1. Proceedings to determine eligibility of farmland for
31 registration. If the eligibility of any land for registration is
32 questioned, the owner of the farmland shall have the burden of
33 proving to the municipal body that the farmland meets the
34 requirements for registration under this chapter. A proceeding
35 under this subsection must commence within 15 days of the day
36 notice of registration is received by the party initiating the
37 proceeding.

38
39 2. Proceedings to determine continued eligibility of
40 registered farmland. Once in any 2-year period, a proceeding may
41 be initiated to determine if the registered farmland continues to
42 meet the requirements for registration under this chapter. The
43 owner of registered farmland shall bear the burden of proof.

44
45 3. Appeals. A decision made by a municipal body under this
46 section may be appealed by any aggrieved party as allowed by law
47 for appeals of decisions made by a municipal board of appeals.

48
49 4. Assistance from department. The department shall
50 provide technical assistance and issue written advisory opinions
51

1 in connection with the determinations a municipal body must make
2 under this section.

3

4 **§55. Disclosure required**

5

6 Every seller of abutting land, as defined in section 52,
7 subsection 1, and every agent of a seller of abutting land must
8 disclose the existence of registered farmland in writing in a
9 purchase and sale agreement for the abutting land. If there is
10 no purchase and sale agreement, the disclosure must be made, in
11 writing, prior to the sales transaction. This section shall not
12 apply unless notice of registration was given in accordance with
13 the provisions of section 53-D.

14 The existence of the registered farmland shall also be
15 stated on any declaration of value, as provided pursuant to Title
16 36, section 4641-D, covering the transfer of title to abutting
17 land.

18

19 **§56. Prohibited acts**

20

21 1. Inconsistent development. No owner of abutting land may
22 undertake or allow any inconsistent development upon or use of
23 land within 100 feet of properly registered farmland.

24

25 2. Building permit. Except as provided in section 57, no
26 municipality may issue a building or use permit allowing any
27 development which is prohibited under subsection 1.

28

29 3. Exemption. This section shall not apply to:

30

31 A. Any lot or parcel of land which, together with any
32 adjoining lot or parcel in the same ownership, was one acre
33 or less in area as of January 1, 1988;

34

35 B. Those subdivisions for which a completed application as
36 described in former Title 30, section 4956, subsection 2,
37 paragraph C-1, or Title 30-A, section 4403, subsection 3,
38 has been filed or approved in the 2 years preceding the
39 registration; or

40

41 C. A lot on which inconsistent development or use has been
42 allowed by permit granted by a state or local government in
43 the 2 years preceding the registration.

44

45 **§57. Variance**

46

47 An owner of real estate may apply to the municipal zoning
48 board of appeals or other municipal body hearing zoning appeals,
49 or, in the case of areas within its jurisdiction, the Maine Land
50 Use Regulation Commission, for a variance permitting an
51 inconsistent development upon or use of land which is otherwise

1 prohibited under section 56. Notwithstanding Title 30-A, section
3 4353, subsection 4, a variance may be issued if adherence to
5 section 56 renders a parcel of land subdivided prior to
7 registration of the farmland unusable for residential purposes.
9 Any variance granted for such a purpose shall be conditioned to
11 provide the maximum feasible setback from the abutting registered
13 farmland.

9 **§58. Enforcement and penalties**

11 1. Enforcement. Proceedings to enforce any provision of
13 this chapter may be brought by a municipality, county or any
15 aggrieved person. Such proceedings may be initiated in
17 accordance with the provisions of the Maine Rules of Civil
19 Procedure, Rule 80B, as applicable.

17 2. Penalties. Any violation of this chapter shall be
19 punishable as follows.

21 A. In the case of failure to disclose the existence of
23 registered farmland as provided by section 55, any contract
25 or other agreement for the purchase and sale of real estate
27 may be declared void by the buyer up until the passing of
29 title to the buyer. If the buyer declares the contract or
31 agreement void under the provisions of this paragraph, any
33 money deposited or paid by the buyer to the seller or the
35 agent of the seller shall be returned to the buyer.

29 B. Any inconsistent development upon or use of land in
31 violation of this chapter may be removed or discontinued by
33 order of the court in a proceeding to enforce this chapter,
35 and the court may fashion any other appropriate equitable
37 remedy consistent with the purposes of this chapter.

35 C. Any person who violates any provisions of this chapter
37 shall, in addition to the other provisions of this section,
39 be subject to the civil penalties and enforcement procedures
41 for land use laws and ordinances in Title 30-A, section 4452.

41 **§59. Other laws not affected**

43 Nothing in this chapter may affect the legal rights,
45 remedies or liabilities of persons arising out of negligence or
47 other wrongful acts or omissions involving the use of pesticides
49 or other agricultural chemicals.

47 **Sec. 2. 12 MRSA §6-A is enacted to read:**

49 **§6-A. Farmland registration**

51 In addition to the powers assigned in section 6, a soil and
53 water conservation district shall review applications for the

1 registration of farmland pursuant to Title 7, chapter 2-B. The
2 district shall, by majority vote of the supervisors, certify
3 whether the land described in the application:

5 1. Acreage. Consists of 5 or more contiguous acres;

7 2. Crop-producing. Includes only land where agricultural
8 chemicals, as defined in Title 7, section 52, were used in the
9 production of farm products, as defined in Title 17, section
10 2805, in 3 or more of the previous 6 calendar years; and

11 3. Relationship to boundary established. Is within 100
12 feet of any property boundary and that the application includes a
13 depiction of the distance between any crop-producing area under
14 consideration and any property boundary within 100 feet that is
15 sufficient to determine the impact of Title 7, section 56,
16 subsection 1, on abutting land.

17 A review under this section must be completed by May 1st of
18 the calendar year in which the application is made.

21 **Sec. 3. Transition clause.** Any person seeking to register land
22 as farmland after the effective date of this Act must apply
23 pursuant to the provisions of the Maine Revised Statutes, Title
24 7, chapter 2-B. The registration of all farmland registered in
25 accordance with Title 7, chapter 2-A, shall lapse June 15, 1990,
26 unless the owner applies for registration under Title 7, chapter
27 2-B, between June 1 and June 15, 1990. An application for
28 registration in accordance with chapter 2-B shall cause a
29 registration under chapter 2-A to remain effective until
30 registration pursuant to chapter 2-B is approved or denied.
31 Registration under chapter 2-A shall remain effective until final
32 action on any proceedings initiated under chapter 2-B, section
33 54, subsection 1 or 3.

35 **Sec. 4. Repeal.** The Maine Revised Statutes, Title 7, chapter
36 2-A, is repealed June 15, 1990.

39 FISCAL NOTE

41 It is anticipated that all costs associated with this bill,
42 such as for the establishment of forms, expected mailings and
43 other costs, will be absorbed by the Department of Agriculture,
44 Food and Rural Resources utilizing existing resources.

47 STATEMENT OF FACT

49 This amendment replaces the bill, creates significant
50 changes in the farmland adjacency laws and establishes a
51 transitional process between existing law and those changes.

COMMITTEE AMENDMENT "A" to H.P. 697, L.D. 949

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Section 1 of the amendment enacts new farmland adjacency laws. The new laws would go into effect this fall, but the next registration period is delayed until June 1-15, 1990. One final registration period would occur between June 1-15, 1991.

Section 1 of the amendment also incorporates unchanged language from the existing law with changes in the law which limit eligibility for registration and provide more time for response and more information to abutting landowners.

New provisions of the law:

1. Include changes in the definition of farmland which limit registration to land on which a crop is actually being produced with the use of agricultural chemicals and exclude Christmas tree farms and areas covered with noncrop vegetation from registration;

2. Establish that a reduced setback distance of 100 feet is measured from the edge of the crop-producing area, not the property boundary;

3. Add the requirement that land must be classified as farmland under the Farm and Open Space Tax Law to be eligible for registration. This provision exposes the owner to financial penalties if the land is withdrawn within 5 years of a year in which the land is classified under the Farm and Open Space Tax Law;

4. Establish a preregistration process during which the application for registration is reviewed and certified by the local soil and water conservation district and abutting landowners receive an initial notice of the owner's intent to register farmland;

5. Add a preregistration notice to abutters, directs the Department of Agriculture, Food and Rural Resources to develop abutter notices which clarify what the abutter can and cannot do on land within the setback zone and clarifies filing practices at county registries of deeds; and

6. Provide that a variance may be issued by the municipal board of appeals if the 100-foot setback would make a lot existing prior to registration of the farmland unusable for residential purposes.

The amendment also ensures that all currently registered farmland must be requalified under the new provisions of the farmland adjacency laws if the owner wishes to keep the land registered as farmland.

COMMITTEE AMENDMENT "A" to H.P. 697, L.D. 949

1

3 Section 2 of the amendment directs the soil and water
5 conservation districts to review applications for registering
farmland and provides criteria for certifying that the land
qualifies as farmland.

7

9 Section 3 of the amendment provides for the transition
between the 2 laws and establishes a procedure for handling any
appeals to the reregistration of land registered as farmland
under the existing law.

11

13 Section 4 of the amendment repeals the existing farmland
adjacency laws at the end of the next registration period on June
15, 1990.

Reported by the Committee on Agriculture
Reproduced and distributed under the direction of the Clerk of the
House
6/15/89 (Filing No. H-549)