

MAINE STATE LEGISLATURE

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

COMMITTEE AMENDMENT "A" to H.P. 1545, L.D. 2130, Bill, "An Act to Purchase the Development Rights to Farmland"

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. 5 MRSA §12004-G, sub-§28-A is enacted to read:

<u>28-A. Natural</u>	<u>Farmland</u>	<u>Legisla-</u>	<u>7 MRSA</u>
<u>Resources</u>	<u>for</u>	<u>tive Per</u>	<u>\$103</u>
	<u>Maine's</u>	<u>Diem and</u>	
	<u>Future</u>	<u>Expenses</u>	
	<u>Board</u>	<u>for Ap-</u>	
		<u>pointed</u>	
		<u>Members</u>	

Sec. 2. 7 MRSA §18 is enacted to read:

§18. Holding of real estate

The commissioner may accept, hold, administer and retain interests in real estate in order to further the purposes of this Title.

Sec. 3. 7 MRSA c. 4 is enacted to read:

CHAPTER 4

FARMLAND FOR MAINE'S FUTURE

§101. Legislative findings and purpose

2 1. Findings. The natural resources of the State, including
4 its agricultural lands, are the underpinnings of the State's
6 economy. Opportunities for the State's agriculture will continue
8 to expand as climatic changes, population increases and economic
10 pressures diminish opportunities for agriculture in other states,
12 but the amount of state land in active farming has diminished
14 drastically over the last 30 years and this trend persists.
16 Agriculture is threatened by the expansion of competing land uses
18 that increase farmland values and cause the irreversible
20 conversion of farmland to other uses. The development of
22 residential subdivisions in rural areas leads to conflicts
24 between farmers and adjacent land owners. These pressures have
26 made it difficult to maintain and expand agriculture to meet
28 growing demands for locally grown agricultural products.

16 The Legislature finds that further indiscriminate loss of
18 farmland is undesirable. Farmland not only provides food, it
20 provides open space, passive recreational opportunities, wildlife
22 habitat and supports related businesses that sustain rural
24 economies. In addition, agriculture has shaped the traditional
26 patterns of land development in many parts of the State and in
28 doing so has helped define the quality of life that citizens of
30 the State treasure and wish to preserve.

26 2. Purpose. The purpose of this chapter is to establish a
28 program to purchase development easements for farmland in order
30 to:

30 A. Maintain an agricultural land base;

32 B. Ensure a viable agricultural industry;

34 C. Sustain the infrastructure necessary for agricultural
36 activity;

38 D. Ensure a quality of rural community life that includes
40 agrarian values;

42 E. Increase regional food independence;

44 F. Provide open space and preserve the beauty and rustic
46 character of the State;

48 G. Provide economic stability to the rural communities of
50 the State;

52 H. Provide critical habitat for wildlife and migratory
54 waterfowl; and

1. Provide the State and its communities with a significant and effective tool for managing growth.

§102. Definitions

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

1. **Board.** "Board" means the Farmland for Maine's Future Board established under Title 5, section 12004-G.

2. **Development easement.** "Development easement" means an interest in real estate that represents the right of the holder to prevent the development or improvement of the real estate for any purpose other than agricultural production or maintenance of open space.

3. **Fund.** "Fund" means the Farmland for Maine's Future Fund established in section 108.

§103. Farmland for Maine's Future Board

1. **Established.** The Farmland for Maine's Future Board, established by Title 5, section 12004-G, is organized within the department and shall consist of 9 members as follows:

A. Five persons representing different types of agricultural production or agricultural enterprise. In making these appointments, the Governor shall seek, to the extent practicable, to represent the various geographic areas of the State;

B. The commissioner and the Treasurer of State as ex officio members;

C. A person with knowledge of or experience in land appraisal, land values and real estate transactions; and

D. A person representing the public at large.

2. **Appointments.** The 7 appointed members are appointed by the Governor subject to review by the joint standing committee of the Legislature having jurisdiction over agriculture and confirmation by the Legislature.

3. **Terms of members; chair.** The 7 appointed members are appointed to 4-year terms except that the initial appointments must be made so that the terms of 2 members expire after one year, the terms of 2 members expire after 2 years, the terms of 2 members expire after 3 years and the term of one member expires after 4 years. Any vacancy is filled for the remainder of the appointed term. A member shall serve until a successor has been

2 appointed and confirmed. An appointed member may not serve more
3 than 2 consecutive terms. The board shall select its own chair
4 annually.

5 4. Quorum. A quorum for the transaction of official
6 business is 5 members. Actions of the board must be approved by
7 majority vote.

8 5. Conflict of interest. Any member or members of the
9 board shall disqualify themselves in any proceeding in which the
10 member or members have reason to believe that they could not act
11 with impartiality, or in any matter in which their impartiality
12 might reasonably be questioned. The board may not consider land
13 for the acquisition of development easement when the land is
14 owned by a board member or a member of the immediate family of a
15 board member.

16 §104. Board powers and duties

17 The board has the following powers and duties.

18 1. Nominations. The board shall disseminate information to
19 landowners who may wish to nominate land for consideration.

20 2. Rules. The board may adopt rules, in accordance with
21 the Maine Administrative Procedure Act and the provisions of this
22 chapter, governing board business and establishing procedures for
23 the selection and acquisition of development easements.

24 3. Negotiate. The board may negotiate for the purchase or
25 other acquisition of development easements and other interests in
26 farmland.

27 4. Purchase. The board may authorize the distribution of
28 funds from the fund to the department for the acquisition of
29 development easements and other interests in accordance with the
30 criteria established in section 105.

31 5. Engage services. The board may engage services to
32 appraise and evaluate properties and to ensure compliance with
33 the conditions of development easements.

34 6. Disclosure. The board shall notify any potential seller
35 of a development easement that the transaction will have the
36 effect of transferring mineral rights to the holder of the
37 development easement.

38 7. Review. The board shall review annually or more
39 frequently if needed the activity on land subject to state-owned
40 development easements.

2 8. Compliance. The board shall initiate legal and other
3 proceedings as needed to ensure compliance with the terms of
4 development easements or other agreements.

6 9. Protect. The board shall review state programs and
7 other private or public actions that may adversely affect the
8 operation of property subject to a development easement and
9 recommend appropriate action to mitigate adverse effects.

10 10. General powers and duties. The board may exercise any
11 powers and perform any duties essential to attaining the purposes
12 of this chapter.

14 §105. Criteria for selection

16 The board shall seek development easements on land with the
17 following characteristics:

20 1. Productive. A high level of agricultural production
21 capability as indicated by such information as soil
22 classifications, previous conservation history and production
23 records;

24 2. Flexible. The potential to produce different
25 commodities or to respond to long-term market changes;

28 3. Viable. In reasonable proximity to other active, viable
29 farms and likely to contribute to the viability of farming in the
30 region and State;

32 4. Threatened. Threatened by nonagricultural development;

34 5. Municipal support. Located in municipalities with a
35 strong commitment to agriculture as evidenced by the
36 municipality's growth management plan, capital investment
37 planning, participation in the Farm and Open Space Tax Law, Title
38 36, chapter 105, subchapter X, and other ordinances pertaining to
39 or affecting agriculture; and

40 6. Accessible. Good access to markets and support
41 services.

44 Provided that the above criteria are met, priority is given when
45 matching funds are made available from private or public sources,
46 the landowner or the municipality.

48 §106. Terms of development easement

50 The terms of any development easement negotiated by the
51 board must be consistent with the following.

52

2 1. Permitted use. Except as otherwise provided in this
4 section, a development easement may only allow use of the land
6 for agricultural farming, forest uses or other uses conducive to
8 retaining land or water areas predominately in their natural,
10 scenic or open condition.

12 2. Title. Title to all development easements or other
14 interests acquired pursuant to this chapter must be vested solely
16 in the State and held by the department.

18 3. Conservation plan. A development easement may not be
20 acquired unless agricultural operations conducted on the land are
22 performed in accordance with a conservation plan approved by a
24 soil and water conservation district.

26 4. Residential construction. Residential construction must
28 be limited to structures necessary for the farmer or the farmer's
30 immediate family and persons employed by the farm operation and
32 must be subject to review by the board.

34 5. Mining. A development easement must prohibit mining
36 except that an owner may extract gravel for on-farm use. The
38 prohibition of mining does not include sod farming.*

40 6. Agricultural construction. A development easement must
42 prohibit construction of agricultural structures that would
44 result in more than 5% of the total easement area being covered
46 by buildings.

48 7. Public access. A development easement may provide for
50 public access if the access provided will not interfere with or
52 jeopardize the farming operation. The purchase of a development
easement does not confer upon the public any right of access
unless specifically provided in the easement.

8. Other easements. A development easement must provide
that no roads, utilities, other easements or rights-of-way be
created or conveyed without the approval of the board.

§107. Appraisals; recordkeeping; coordination

1. Appraisals. Prior to reaching an agreement to purchase
any development easement, an independent real estate appraiser
must be retained by the board to conduct an appraisal and advise
the board of the full value of the real estate in question and
the value of that property subject to the proposed development
easement. The seller may obtain an independent appraisal.

2. Recordkeeping. The board shall collect and maintain
pertinent records on any land subject to a development easement
under this chapter including appraisals and copies of the
development easement.

2 3. Coordination. The board and the Land for Maine's Future
3 Board, as established in Title 5, chapter 379, shall cooperate
4 and provide each other access to information on properties being
5 considered for acquisition.

6
7 §108. Farmland for Maine's Future Fund

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9 There is established the Farmland for Maine's Future Fund.
10 The fund consists of the proceeds from any bonds authorized for
11 the purposes of this chapter and any funds received as
12 contributions from private and public sources. The fund must be
13 held separate and apart from all other money, funds and
14 accounts. Investment earnings credited to the assets of the fund
15 become part of the fund assets. Any balance remaining in the
16 fund at the end of a fiscal year may not lapse but must be
17 carried forward to the next fiscal year.

18
19 The board may authorize use of the fund for the acquisition
20 of development easements and other interests in accordance with
21 the provisions of this chapter including, but not limited to,
22 expenses for surveyors, appraisals, legal fees, other expenses
23 normally incident to the acquisition of real estate and any other
24 expenses directly related to the administration of the fund, or
25 authorized by this chapter, including reimbursement of nonprofit
26 land conservation organizations for expenses incurred in
27 acquiring and transferring development easements to the State.

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29 §109. Municipal review

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31 The board shall provide appropriate elected municipal
32 officials with adequate opportunity to review all proposals to
33 purchase a development easement before concluding the purchase
34 agreement.

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36 §110. Report

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38 The board shall report on its activities, expenditures of
39 the fund and acquisitions of development easements and other
40 interests to the Commissioner of Agriculture, Food and Rural
41 Resources and to the joint standing committee of the Legislature
42 having jurisdiction over agricultural matters by January 31st of
43 the first year of each legislative biennium.

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45 Sec. 4. Appropriation. The following funds are appropriated
46 from the General Fund to carry out the purposes of this Act.

1990-91

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**AGRICULTURE, FOOD AND RURAL RESOURCES,
DEPARTMENT OF**

Farmland for Maine's Future Board

Positions	(1.0)
Personal Services	\$25,000
All Other	7,500

Provides funds for the per diem and travel expenses of board members. Also provides funds for a senior staff position beginning on or after January 1, 1991.

**DEPARTMENT OF AGRICULTURE, FOOD AND
RURAL RESOURCES**

TOTAL \$32,500

FISCAL NOTE

This bill appropriates \$32,500 from the General Fund in fiscal year 1990-91 to the Farmland for Maine's Future Board within the Department of Agriculture, Food and Rural Resources for the per diem and expenses of board members. This also includes funding for one senior staff position beginning on or after January 1, 1991.

This bill also creates the Farmland for Maine's Future Fund which will consist of the proceeds of bonds authorized for this purpose, contributions from private and public services, and interest earned on the assets of the fund. A companion bill (LD 2129) has proposed a \$15 million bond issue for this fund. Funding will depend on final legislative action on this companion bill and its approval by the voters of this State. The amount of contributions from private and public sources also cannot be determined at this time.'

STATEMENT OF FACT

Maine has lost approximately 50% of its agricultural land base since 1959. While the rate of loss has slowed, 126,000 acres or roughly 9% of the agricultural land base was lost in the last 5 years. Concern about these losses prompted formation of a task force to examine options for maintaining the remaining agricultural land. The task force recommended the program authorized by this legislation.

COMMITTEE AMENDMENT "A" to H.P. 1545, L.D. 2130

2 This amendment retains the intent of the original bill to
establish an agricultural land conservation program to purchase
4 the development rights for farms voluntarily offered by the
landowner for consideration. A 9-member board consisting of 7
6 appointees of the Governor, the Commissioner of Agriculture, Food
and Rural Resources and the State Treasurer would select farms in
8 accordance with criteria that ensures the farms selected will
contribute to the continued viability of agriculture in the State.

10 The board will be housed within the Department of
Agriculture, Food and Rural Resources and will authorize the use
12 of funds by the department to purchase development easements.
Under this program, the State will protect the farmland forever
14 by paying the landowner for the value of the development rights
in return for permanent restrictions against nonagricultural
16 activities. Development easements will prohibit residential
construction, mining, removal of top soil, or placing buildings
18 on more than 5% of the land. Legislation requesting a \$15
million dollar bond issue has been introduced to finance
20 purchases of development easements.

22 Criteria for the selection of eligible farmland include the
agricultural production capability of the land, the contribution
24 of the farm to the viability of farming in the region and the
State, the degree of development pressure, the strength of
26 support from the municipality and access to market and support
services.

28
30 The landowner retains ownership of the land and may farm it,
use it as collateral for loans or sell it. However, the land may
never be developed for nonfarm uses.

Reported by the Committee on Agriculture
Reproduced and distributed under the direction of the Clerk of the
House
3/12/90 (Filing No. H-911)