MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1317

H.P. 920

House of Representatives, March 26, 1991

Submitted by the Department of Agriculture, Food and Rural Resources pursuant to Joint Rule 24.

Reference to the Committee on Agriculture suggested and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative PINES of Limestone.

Cosponsored by Senator LUDWIG of Aroostook and Senator TWITCHELL of Oxford.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND NINETY-ONE

An Act to Revise the Law Protecting Farmers' Rights to Farm.



	Be it enacted by the People of the State of Maine as follows:
2	Sec. 1. 7 MRSA c. 103, sub-c. II-B is enacted to read:
4	
	SUBCHAPTER II-B
6	
	GROUND WATER CONTAMINATION FUND
8	Canada a a mara a a a a a a a a a a a a a a a
- 0	§626. Ground Water Contamination Fund established
10	The Ground Water Contemination Fund is established as a
10	The Ground Water Contamination Fund is established as a nonlapsing fund. The Commissioner of Agriculture, Food and Rural
12	Resources shall adopt rules under the Maine Administrative
14	Procedure Act and may collect fees for this fund from the sale of
14	pesticides and fertilizers within the State.
16	pestitides and leitilizers within the beate.
	§627. Rules, fees
18	
	1. Rules. The commissioner shall adopt rules in accordance
20	with the Maine Administrative Procedure Act to implement this
	subchapter and to establish fees authorized by this section.
22	
	2. Fees. The rules must establish fees at a level that
24	generates at least \$100,000 per year.
26	§628. Expenditures
28	1. Permitted expenditures. The commissioner may authorize
	expenses from the Ground Water Contamination Fund for monitoring,
30	testing and remedial actions, if contamination of ground water
2.0	occurs from the use of pesticides, fertilizers or manures and the
32	commissioner determines that the person responsible for the farm
2.4	or farming operations is using best management practices as
34	provided under Title 17, section 2805, subsection 2.
36	2. Prohibited expenditures. The commissioner may not
30	2. Prohibited expenditures. The commissioner may not authorize expenditures from the fund when chemicals, fertilizers
38	or manure are used:
30	or manare are aseas
-40	A. By nonagricultural industrial or manufacturing users;
	2) 1.010g2 2.002 02 02 02 02 110 02 03 110 02 03 07
42	B. By persons not trained or licensed to use them;
44	C. More frequently than recommended;
46	D. At the wrong time or for the wrong reason;
48	E. On an unapproved crop or in an unapproved manner;
50	F. At too high a concentration; or
52	G. After registration has been canceled.

2	Sec. 2. 17 MRSA §2805, sub-§§2 and 4, as enacted by PL 1981, c.
	472, are amended to read:
4	
_	2. Best management practices. A farm or farm operation
6	shall may not be considered a public or private nuisance if the farm or farm operation alleged to be a nuisance conforms to
8	generallyacceptedagricultural best management practices, as determined by the Commissioner of Agriculture, Food and Rural
10	Resources in accordance with the Maine Administrative Procedure
* -	Act, Title 5, chapter 375.
12	
	4. Application; local ordinances. This section shall does
14	not affect the application of state and federal statutes. Ar
	ordinance of any unit or local government that impacts any
16	activity incident to any farm operation may not be adopted unless
	the local government has provided a copy of the proposed
18	ordinance to the Commissioner of Agriculture, Food and Rural
20	Resources 90 days prior to consideration of that ordinance.
20	The commissioner shall advise the legal government whether the
22	The commissioner shall advise the local government whether the proposed ordinance would restrict or prohibit the use of best
	management practices.
24	management praceroes.
	Sec. 3. 17 MRSA §2805, sub-§§5 and 6 are enacted to read:
26	000 000
	5. Complaint resolution. The commissioner shall
28	investigate all complaints involving a farm or farm operation,
	including, but not limited to, complaints involving utilization
30	of waste products, ground and surface water pollution and insect
	infestations. If the commissioner identifies the source or
32	sources of the problem, has reason to believe that the source is
	a nuisance and that the nuisance is caused by the use of other
34	than best management practices, the commissioner shall:
36	A. Determine the changes needed in the farm or farm
	operation to comply with best management practices;
8	
	B. Advise the person responsible for the farm or farm
f0	operation what changes, as determined in paragraph A, are
	necessary in order to conform with best management practices
2	and determine subsequently if the changes are implemented;
4	C. Give the findings of the initial investigation and
<i>c</i>	subsequent investigations, as well as any determination of
:6	compliance, to the complainant and person responsible; and
	D. If the manage magnetical action is a set to be a set to the set of the set
:8	D. If the person responsible does not adopt best management
0	<pre>practices, the commissioner shall send a written report to an appropriate agency if a federal or state law has been</pre>
	violated and may refer the matter to the Attorney General.
2	The Attorney General may institute an action to abate a
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	nuisance and the court may order the abatement with costs as
2	provided under this chapter.
4	If the commissioner, upon investigation, finds that the person
	responsible for the farm or farm operation is using best
6	management practices, the commissioner shall advise the complainant and the person responsible in writing.
8	
	6. Costs associated with nuisance suits. In any suit
10	brought on the grounds that a farm or farm operation is a
	nuisance, a prevailing defendant shall be awarded reasonable
12	costs, expenses and attorney's fees.
14	
16	STATEMENT OF FACT
18	This bill establishes a Ground Water Contamination Fund that will be funded by a fee on the sale of pesticides and
20	fertilizers. This fund may be used for monitoring, testing and remedial actions in cases where ground water was contaminated and
22	the farmers were using best management practices.
24	This bill requires the Department of Agriculture, Food and Rural Resources to investigate all complaints involving farm or
26	farm operations and to determine if any changes are required to comply with best management practices. If the person responsible
28	for the farm or farm operation does not adopt best management practices, the commissioner may refer the matter to the Attorney
30	General and other appropriate regulatory agencies for action.
32	This bill also provides incentives to agricultural producers
_	who adopt best management practices. Incentives include allowing
34	farmers using best management practices to recover costs
	associated with the defense of nuisance law suits. The bill also
36	requires local governments to assess the economic impact of
	proposed local ordinances that would eliminate or restrict the

use of best management practices.

38