

MAINE STATE LEGISLATURE

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L.D. 1064

DATE: 4-5-06

(Filing No. S-563)

AGRICULTURE, CONSERVATION AND FORESTRY

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**STATE OF MAINE
SENATE
122ND LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "B" to S.P. 381, L.D. 1064, Bill, "An Act To Clarify the Laws Governing Agricultural Composting Operations"

Amend the bill by striking out all of sections 1 and 2 and inserting in their place the following:

'Sec. 1. 17 MRSA §2805, as amended by PL 2003, c. 283, §6, is further amended to read:

§2805. Farm, farm operation or agricultural composting operation not nuisance; use of best management practices

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Farm" means the land, buildings and machinery used in the commercial production of farm products.

B. "Farm operation" means a condition or activity that occurs on a farm in connection with the commercial production of farm products and includes, but is not limited to, operations giving rise to noise, odors, dust, insects, and fumes; operation of machinery and irrigation pumps; ground and aerial seeding; ground spraying; ~~composting of material produced by the farm or to be used at least in part on the farm~~; and disposal of manure; the application of chemical fertilizers, soil amendments, conditioners and pesticides; and the employment and use of labor.

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2 C. "Farm product" means those plants and animals useful to
humans and includes, but is not limited to forages and sod
4 crops, grains and food crops, dairy products, poultry and
poultry products, bees, livestock and livestock products and
6 fruits, berries, vegetables, flowers, seeds, grasses and
other similar products.

8
9 D. "Agricultural composting operation" means composting
10 that takes place on a farm. "Agricultural composting
11 operation" does not include an operation that involves
12 nonorganic municipal solid waste or that composts municipal
13 sludge, septage, industrial solid waste or industrial
14 sludge. "Agricultural composting operation" does not
15 include an operation that composts materials with a
16 moderate or high risk of contamination from heavy metals,
17 volatile and semivolatile organic compounds, polychlorinated
18 biphenyls or dioxin.

19 E. "Composting" means the controlled aerobic decomposition
20 of organic materials to produce a soil-like product
21 beneficial to plant growth and suitable for agronomic use.

22
23 2-A. **Farm, farm operation or agricultural composting**
24 **operation not nuisance.** A farm ~~or~~ farm operation or
25 agricultural composting operation may not be considered a public
26 or private nuisance if the farm ~~or~~ farm operation or
27 agricultural composting operation alleged to be a nuisance is in
28 compliance with applicable state and federal laws, rules and
29 regulations and meets one of the following conditions:

30
31 A. The farm ~~or~~ farm operation or agricultural composting
32 operation conforms to best management practices, as
33 determined by the Commissioner of Agriculture, Food and
34 Rural Resources in accordance with the Maine Administrative
35 Procedure Act, Title 5, chapter 375;

36
37 B. For complaints regarding the storage or use of farm
38 nutrients as defined in Title 7, section 4201, subsection 4,
39 the farm or farm operation has implemented a nutrient
40 management plan developed in accordance with Title 7,
41 section 4204 and operation of the farm is consistent with
42 the nutrient management plan; or

43
44 C. The farm or farm operation existed before a change in
45 the land use or occupancy of land within one mile of the
46 boundaries of the farm as long as, before the change in land
47 use or occupancy, the farm or farm operation would not have
48 been considered a nuisance. This paragraph does not apply
49 to a farm or farm operation that materially changes the
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2 conditions or nature of the farm operation after a change in
the land use or occupancy of land within one mile of the
4 boundaries of the farm. Nothing in this paragraph affects
the applicability of any of the other provisions of this
6 section.

8 **3-A. Violation of municipal ordinances.** A method of
operation used by a farm or farm operation located in an area
where agricultural activities are permitted may not be considered
10 a violation of a municipal ordinance if the method of operation
constitutes a best management practice as determined by the
12 Department of Agriculture, Food and Rural Resources.

14 **4. Application; municipal ordinances.** This section does
not affect the application of state and federal laws. After the
16 effective date of this subsection, a municipality must provide
the Commissioner of Agriculture, Food and Rural Resources with a
18 copy of any proposed ordinance that impacts farm operations. The
clerk of the municipality or a municipal official designated by
20 the clerk shall submit a copy of the proposed ordinance to the
commissioner at least 90 days prior to the meeting of the
22 legislative body or public hearing at which adoption of the
ordinance will be considered. The commissioner shall review the
24 proposed ordinance and advise the municipality if the proposed
ordinance would restrict or prohibit the use of best management
26 practices. This subsection does not affect municipal authority
to enact ordinances.

28 **5. Complaint resolution.** The commissioner shall
30 investigate all complaints involving a farm ~~or~~ farm operation or
agricultural composting operation, including, but not limited to,
32 complaints involving the use of waste products, ~~ground~~
groundwater and surface water pollution and insect infestations.
34 In cases of insect infestations not arising from agricultural
activities, when the State Entomologist believes that the
36 infestation is a public nuisance and is able to identify the
source or sources of the infestation, the commissioner shall
38 refer the matter to the Department of the Attorney General. If
the commissioner finds upon investigation that the person
40 responsible for the farm ~~or~~ farm operation or agricultural
composting operation is using best management practices, the
42 commissioner shall notify that person and the complainant of this
finding in writing. Notwithstanding subsection 2-A, paragraph C,
44 if the commissioner identifies the source or sources of the
problem and finds that the problem is caused by the use of other
46 than best management practices, the commissioner shall:

48 A. Determine the changes needed in the farm ~~or~~ farm
operation or agricultural composting operation to comply
50 with best management practices and prescribe site-specific

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2 site-specific best management practices for that farm
operation or agricultural composting operation;

4 B. Advise the person responsible for the farm ~~or~~ farm
operation or agricultural composting operation of the
6 changes, as determined in paragraph A, that are necessary to
conform with best management practices and determine
8 subsequently if those changes are implemented; and

10 C. Give the findings of the initial investigation and
subsequent investigations and any determination of
12 compliance to the complainant and person responsible.

14 **5-A. Good faith.** The Maine Rules of Civil Procedure, Rule
11 applies in any private action filed against the owner or
16 operator of a farm ~~or~~ farm operation or agricultural composting
operation in which it is alleged that the farm ~~or~~ farm operation
18 or agricultural composting operation constitutes a nuisance if it
is determined that the action was not brought in good faith and
20 was frivolous or intended for harassment only.

22 **6. Failure to adopt best management practices.** If the
person responsible for the farm ~~or~~ farm operation or
24 agricultural composting operation does not apply best management
practices as required by the Commissioner of Agriculture, Food
26 and Rural Resources, the commissioner shall send a written report
to an appropriate agency if a federal or state law has been
28 violated and to the Attorney General. The Attorney General may
institute an action to abate a nuisance or to enforce the
30 provisions of this section or any other applicable state law, and
the court may order the abatement with costs as provided under
32 section 2702, such injunctive relief as provided in this section
or by other applicable law, or that a civil violation has been
34 committed. Failure to apply best management practices in
accordance with this section constitutes a separate civil
36 violation for which a fine of up to \$1,000, together with an
additional fine of up to \$250 per day for every day that the
38 violation continues, may be adjudged.

40 **7. Agricultural Complaint Response Fund.** There is
established the nonlapsing Agricultural Complaint Response Fund.
42 The commissioner may accept funds from any source designated to
be placed in the fund. The commissioner may authorize expenses
44 from the fund as necessary to investigate complaints involving a
farm ~~or~~ farm operation or agricultural composting operation and
46 to abate conditions potentially resulting from farms ~~or~~ farm
operations or agricultural composting operations.

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8. Rules. The commissioner shall adopt rules in accordance with the Maine Administrative Procedure Act to interpret and implement this section.

9. Educational outreach. The Commissioner of Agriculture, Food and Rural Resources shall conduct an educational outreach program for the agricultural community to increase awareness of the provisions of this section and the currently adopted best management practices of the Department of Agriculture, Food and Rural Resources. The commissioner shall inform the public about the provisions of this section, the complaint resolution process adopted by the department and state policy with respect to preservation and protection of agricultural and natural resources.'

Further amend the bill in section 3 in paragraph A in the 4th line (page 3, line 13 in L.D.) by inserting after the following: "composting" the following: 'operation'

Further amend the bill by striking out all of section 4.

Further amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

SUMMARY

This amendment replaces the definition of "agricultural composting" found in the bill with definitions of "agricultural composting operation" and "composting." It removes the provision that proposed excluding workers in the employ of an agricultural composting operation from the definition of employment in Maine's unemployment compensation statute. It removes the retroactivity provision in the bill.

FISCAL NOTE REQUIRED
(See attached)



122nd MAINE LEGISLATURE

LD 1064

LR 0455(04)

An Act To Clarify the Laws Governing Agricultural Composting Operations

Fiscal Note for Bill as Amended by Committee Amendment "B"

Committee: Agriculture, Conservation and Forestry

Fiscal Note Required: Yes

Fiscal Note

	2005-06	2006-07	Projections 2007-08	Projections 2008-09
Net Cost (Savings)				
General Fund	\$0	\$15,199	\$22,558	\$23,460
Revenue				
General Fund	\$0	(\$15,199)	(\$22,558)	(\$23,460)
Other Special Revenue Funds	\$0	(\$817)	(\$1,237)	(\$1,287)

Fiscal Detail and Notes

This bill will reduce General Fund revenue by an estimated \$15,199 in fiscal year 2006-07 as a result of the sales tax exemption for agricultural composting based on an October 1, 2006 effective date.