

# MAINE STATE LEGISLATURE

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AMS

2 Date: 3-12-08

(Filing No. S-455)

3 AGRICULTURE, CONSERVATION AND FORESTRY

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5 STATE OF MAINE  
6 SENATE  
7 123RD LEGISLATURE  
8 SECOND REGULAR SESSION

9 COMMITTEE AMENDMENT "A" to S.P. 591, L.D. 1684, Bill, "An Act To  
10 Create the Maine Agriculture Protection Act"

11 Amend the bill by inserting after the title and before the enacting clause the  
12 following:

13 'Emergency preamble. Whereas, acts and resolves of the Legislature do not  
14 become effective until 90 days after adjournment unless enacted as emergencies; and

15 Whereas, maintaining a base of commercially viable agricultural land is vital to  
16 rural communities and the State's economy; and

17 Whereas, thoughtful policies are needed to address the impact of development on  
18 working farms and farmland; and

19 Whereas, convening a commission for this purpose as soon as possible will allow  
20 more time for thoughtful examination of the issues; and

21 Whereas, in the judgment of the Legislature, these facts create an emergency within  
22 the meaning of the Constitution of Maine and require the following legislation as  
23 immediately necessary for the preservation of the public peace, health and safety; now,  
24 therefore,'

25 Amend the bill by striking out all of sections 1 and 2 and inserting the following:

26 'Sec. 1. 7 MRSA §52, sub-§3, as enacted by PL 1989, c. 478, §1, is amended to  
27 read:

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

31 Sec. 2. 7 MRSA §52, sub-§3-A is enacted to read:

**COMMITTEE AMENDMENT**

A. of S.

1 3-A. Farm product. "Farm product" means those plants and animals useful to  
2 humans and includes, but is not limited to, forages and sod crops, grains and food crops,  
3 dairy products, poultry and poultry products, bees, livestock and livestock products and  
4 fruits, berries, vegetables, flowers, seeds, grasses and other similar products.

5 **Sec. 3.** 7 MRSA c. 6 is enacted to read:

6 **CHAPTER 6**

7 **MAINE AGRICULTURE PROTECTION ACT**

8 **§151. Short title**

9 This Act may be known and cited as "the Maine Agriculture Protection Act."

10 **§152. Definitions**

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

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

20 **2. Agricultural products.** "Agricultural products" means those plants and animals  
21 and their products that are useful to humans and includes, but is not limited to, forages  
22 and sod crops, grains and feed crops, dairy and dairy products, poultry and poultry  
23 products, bees and bees' products, livestock and livestock products and fruits, berries,  
24 vegetables, flowers, seeds, grasses and other similar products, or any other plant, animal  
25 or plant or animal products that supply humans with food, feed, fiber or fur.  
26 "Agricultural products" does not include trees grown and harvested for forest products.

27 **3. Agricultural support services.** "Agricultural support services" means the aerial  
28 or surface application of seed, fertilizer, pesticides or soil amendments and custom  
29 harvesting.

30 **4. Composting.** "Composting" means the controlled aerobic decomposition of  
31 organic materials to produce a soil-like product beneficial to plant growth and suitable for  
32 agronomic use.

33 **5. Farm.** "Farm" means the land, plants, animals, buildings, structures, ponds and  
34 machinery used in the commercial production of agricultural products.

35 **6. Farm operation.** "Farm operation" means a condition or activity that occurs on a  
36 farm in connection with the commercial production of agricultural products and includes,  
37 but is not limited to, operations giving rise to noise, odors, dust, insects and fumes;  
38 operation of machinery and irrigation pumps; disposal of manure; agricultural support  
39 services; and the employment and use of labor.

1 **§153. Farm; farm operation or agricultural composting operation not a nuisance**

2 A farm, farm operation or agricultural composting operation may not be considered a  
3 public or private nuisance under Title 17, chapter 91 if the farm, farm operation or  
4 agricultural composting operation alleged to be a nuisance is in compliance with  
5 applicable state and federal laws, rules and regulations and:

6 **1. Farm; farm operation; agricultural composting operation.** The farm, farm  
7 operation or agricultural composting operation conforms to best management practices,  
8 as determined by the commissioner in accordance with Title 5, chapter 375;

9 **2. Storage or use of farm nutrients; complaints.** For complaints regarding the  
10 storage or use of farm nutrients as defined in section 4201, subsection 4, the farm, farm  
11 operation or agricultural composting operation has implemented a nutrient management  
12 plan developed in accordance with section 4204 and operation of the farm, farm operation  
13 or agricultural composting operation is consistent with the nutrient management plan; or

14 **3. Change in land use; occupancy of land.** The farm, farm operation or  
15 agricultural composting operation existed before a change in the land use or occupancy of  
16 land within one mile of the boundaries of the farm, farm operation or agricultural  
17 composting operation as long as, before the change in land use or occupancy, the farm,  
18 farm operation or agricultural composting operation would not have been considered a  
19 nuisance. This subsection does not apply to a farm, farm operation or agricultural  
20 composting operation that materially changes the conditions or nature of the farm, farm  
21 operation or agricultural composting operation after a change in the land use or  
22 occupancy of land within one mile of the boundaries of the farm, farm operation or  
23 agricultural composting operation. Nothing in this subsection affects the applicability of  
24 any of the other provisions of this chapter.

25 **§154. Violation of municipal ordinances**

26 A method of operation used by a farm or farm operation located in an area where  
27 agricultural activities are permitted may not be considered a violation of a municipal  
28 ordinance if the method of operation constitutes best management practices as determined  
29 by the commissioner in accordance with section 153, subsection 1.

30 **§155. Application; municipal ordinances**

31 This chapter does not affect the application of state and federal laws. A municipality  
32 must provide the commissioner with a copy of any proposed ordinance that affects farm  
33 operations. The clerk of the municipality or a municipal official designated by the clerk  
34 shall submit a copy of the proposed ordinance to the commissioner at least 90 days prior  
35 to the meeting of the legislative body or public hearing at which adoption of the  
36 ordinance will be considered. The commissioner shall review the proposed ordinance  
37 and advise the municipality as to whether the proposed ordinance restricts or prohibits the  
38 use of best management practices. This section does not affect municipal authority to  
39 enact ordinances.

40 **§156. Complaint resolution**

41 The commissioner shall investigate all complaints involving a farm, farm operation  
42 or agricultural composting operation, including, but not limited to, complaints involving

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COMMITTEE AMENDMENT "A" to S.P. 591, L.D. 1684

1 the use of waste products, groundwater and surface water pollution and insect  
2 infestations. In cases of insect infestations not arising from agricultural activities, when  
3 the State Entomologist believes that the infestation is a public nuisance and is able to  
4 identify the source or sources of the infestation, the commissioner shall refer the matter to  
5 the Department of the Attorney General. If the commissioner finds upon investigation  
6 that the person responsible for the farm, farm operation or agricultural composting  
7 operation is using best management practices, the commissioner shall notify that person  
8 and the complainant of this finding in writing. Notwithstanding section 153, subsection  
9 3, if the commissioner identifies the source or sources of the problem and finds that the  
10 problem is caused by the use of other than best management practices, the commissioner  
11 shall:

12 1. **Changes.** Determine the changes needed in the farm, farm operation or  
13 agricultural composting operation to comply with best management practices and  
14 prescribe site-specific best management practices for that farm, farm operation or  
15 agricultural composting operation;

16 2. **Advise person responsible.** Advise the person responsible for the farm, farm  
17 operation or agricultural composting operation of the changes, as determined in  
18 subsection 1, that are necessary to conform with best management practices and  
19 determine subsequently if those changes are implemented; and

20 3. **Findings.** Give the findings of the initial investigation and subsequent  
21 investigations and any determination of compliance to the complainant and person  
22 responsible.

23 **§157. Good faith**

24 The Maine Rules of Civil Procedure, Rule 11 applies in any private action filed  
25 against the owner or operator of a farm, farm operation or agricultural composting  
26 operation in which it is alleged that the farm, farm operation or agricultural composting  
27 operation constitutes a nuisance if it is determined that the action was not brought in good  
28 faith and was frivolous or intended for harassment only.

29 **§158. Failure to adopt best management practices**

30 If the person responsible for a farm, farm operation or agricultural composting  
31 operation does not apply best management practices as required by the commissioner, the  
32 commissioner shall send a written report to an appropriate agency if a federal or state law  
33 has been violated and to the Attorney General. The Attorney General may institute an  
34 action to abate a nuisance or to enforce the provisions of this chapter or any other  
35 applicable state law, and the court may order the abatement with costs as provided under  
36 Title 17, section 2702, such injunctive relief as provided in this section or by other  
37 applicable law, or that a civil violation has been committed. Failure to apply best  
38 management practices in accordance with this chapter constitutes a separate civil  
39 violation for which a fine of up to \$1,000, together with an additional fine of up to \$250  
40 per day for every day that the violation continues, may be adjudged.

1 **§159. Agricultural Complaint Response Fund**

2 There is established the nonlapsing Agricultural Complaint Response Fund. The  
3 commissioner may accept from any source funds designated to be placed in the fund. The  
4 commissioner may authorize expenses from the fund as necessary to investigate  
5 complaints involving a farm, farm operation or agricultural composting operation and to  
6 abate conditions potentially resulting from farms, farm operations or agricultural  
7 composting operations.

8 **§160. Educational outreach**

9 The commissioner shall conduct an educational outreach program for the agricultural  
10 community to increase awareness of the provisions of this chapter and the best  
11 management practices of the department. The commissioner shall inform the public  
12 about the provisions of this chapter, the complaint resolution process adopted by the  
13 department and state policy with respect to preservation and protection of agricultural and  
14 natural resources.

15 **§161. Rules**

16 The commissioner shall adopt rules in accordance with the Maine Administrative  
17 Procedure Act to interpret and implement this chapter. Rules adopted pursuant to this  
18 section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.'

19 Amend the bill in section 3 by striking out all of paragraph C (page 7, lines 1 to 9 in  
20 L.D.) and inserting the following:

21 'C. When an aggrieved party within 30 days of the commissioner's decision appeals  
22 a decision of the commissioner regarding site-specific best management practices  
23 prescribed for a farm or other issue governed under section 156 or Title 17, section  
24 2701-B ~~or 2805~~, the board shall hold a hearing in accordance with Title 5, chapter  
25 375, subchapter 4. The board may affirm, amend or reverse a decision made by the  
26 commissioner. The board's decision is a final agency action. The board may also  
27 conduct an information-gathering meeting at the request of the department or any  
28 party with a legitimate interest to facilitate the complaint resolution process under  
29 section 156 or Title 17, section 2701-B ~~or 2805~~.'

30 Amend the bill in section 4 in subsection 2-A in the 5th line (page 7, line 16 in L.D.)  
31 by striking out the following: "157" and inserting the following: '156'

32 Amend the bill in section 5 by striking out all of subsection 2 (page 7, lines 23 to 26  
33 in L.D.) and inserting the following:

34 '**2. Crop-producing.** Includes only land where agricultural chemicals, as defined in  
35 Title 7, section 52, were used in the production of farm products, as defined in Title ~~47~~ 7,  
36 section ~~2805~~ 52, subsection 3-A, in 3 or more of the previous 6 calendar years; and'

37 Amend the bill by striking out all of section 7 and inserting the following:

1       ‘Sec. 7. 36 MRSA §2013, sub-§1, ¶A, as repealed and replaced by PL 2007, c.  
2 466, Pt. A, §60, is amended to read:

3       A. "Commercial agricultural production" means commercial production of crops for  
4 human and animal consumption, including the commercial production of sod, an  
5 agricultural composting operation as defined in Title 17 7, section 2805 152,  
6 subsection 1, the commercial production of seed to be used primarily to raise crops  
7 for nourishment of humans or animals and the production of livestock, including the  
8 removal and storage of manure from that livestock.’

9       Amend the bill in section 9 in paragraph A in the last line (page 8, line 11 in L.D.) by  
10 striking out the following: "subsection 7" and inserting the following: 'subsection 5'

11       Amend the bill by inserting after section 9 the following:

12       ‘**Sec. 10. Commission to Study the Protection of Farms and Farmland**  
13 **established.** The Commission to Study the Protection of Farms and Farmland, referred  
14 to in this section as "the commission," is established.

15       **1. Membership.** The commission consists of 11 members, appointed as follows:

16       A. Two members of the Senate, one member from the party holding the largest  
17 number of seats and one member from the party holding the 2nd largest number of  
18 seats, appointed by the President of the Senate. At least one Senate member must be  
19 serving on the Joint Standing Committee on Agriculture, Conservation and Forestry;

20       B. Four members of the House of Representatives, at least one member from the  
21 party holding the largest number of seats and at least one member from the party  
22 holding the 2nd largest number of seats, all appointed by the Speaker of the House.  
23 At least one House member must be serving on the Joint Standing Committee on  
24 Agriculture, Conservation and Forestry;

25       C. One member with expertise in land use policy and knowledge of farmland  
26 preservation programs appointed by the President of the Senate;

27       D. One member with expertise in tax policy appointed by the President of the  
28 Senate;

29       E. Two members recommended by a council representing diverse agricultural  
30 producer associations and appointed by the Speaker of the House; and

31       F. One member representing municipal interests appointed by the Speaker of the  
32 House.

33       **2. Commission chairs.** The first-named Senator is the Senate chair of the  
34 commission and the first-named member of the House is the House chair of the  
35 commission.

36       **3. Appointments; convening of commission.** All appointments must be made no  
37 later than 30 days following the effective date of this Act. The appointing authorities  
38 shall notify the Executive Director of the Legislative Council once all appointments have  
39 been made. When the appointment of all members has been completed, the chairs of the  
40 commission shall call and convene the first meeting of the commission.

1       **4. Duties.** The commission shall develop policy initiatives to protect working farms  
2 from the impact of development and to maintain a base of commercially viable  
3 agricultural land for Maine's future. Towards this end, the commission shall:

4       A. Develop a system to classify farmland that is viable for agricultural production  
5 and establish statewide criteria for identifying farmland that warrants the highest  
6 order of protection;

7       B. Explore options and develop a proposal for designating agriculture protection  
8 areas. In exploring options, the commission shall review provisions establishing  
9 agricultural protection zones or districts in other states;

10       C. Review eligibility criteria and participation by farmers in Maine's current use  
11 property tax programs and develop recommendations regarding tax policy; and

12       D. Consider requiring an assessment of potential impacts on agricultural land prior to  
13 a governmental action such as a permitting decision or commencement of a public  
14 works project.

15       **5. Staff assistance.** The Legislative Council shall provide necessary staffing  
16 services to the commission.

17       **6. Report.** No later than November 5, 2008, the commission shall submit a report  
18 that includes its findings and recommendations, including suggested legislation, to the  
19 joint standing committee of the Legislature having jurisdiction over agricultural matters.  
20 Upon receipt of the report, the joint standing committee of the Legislature having  
21 jurisdiction over agricultural matters may introduce legislation related to the protection of  
22 farmland to the First Regular Session of the 124th Legislature.

23       **7. Commission budget.** The commission shall seek outside funds to fully fund all  
24 costs of the commission. If sufficient outside funding has not been received by the  
25 commission by August 1, 2008 to fully fund all costs of the commission, no meetings are  
26 authorized and no expenses of any kind may be incurred or reimbursed. Contributions to  
27 support the work of the commission may not be accepted from any party having a  
28 pecuniary or other vested interest in the outcome of the matters being studied. Any  
29 person, other than a state agency, desiring to make a financial or in-kind contribution  
30 must certify to the Legislative Council that it has no pecuniary or other vested interest in  
31 the outcome of the study. The certification must be made in the manner prescribed by the  
32 Legislative Council. All contributions are subject to approval by the Legislative Council.  
33 All funds accepted must be forwarded to the Executive Director of the Legislative  
34 Council along with an accounting record that includes the amount of the funds, the date  
35 the funds were received, from whom the funds were received and the purpose of and any  
36 limitation on the use of the funds. The Executive Director of the Legislative Council  
37 shall administer any funds received by the commission. The executive director shall  
38 notify the chairs of the commission when sufficient funding has been received.

39       **Sec. 11. Appropriations and allocations.** The following appropriations and  
40 allocations are made.

41       **LEGISLATURE**

42       **Study Commissions - Funding 0444**



COMMITTEE AMENDMENT "A" to S.P. 591, L.D. 1684

1 Initiative: Provides funds for the per diem and general operating expenses of the  
2 Commission to Study the Protection of Farms and Farmland.

3	<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2007-08</b>	<b>2008-09</b>
4	Personal Services	\$0	\$1,320
5	All Other	\$0	\$2,950
6			
7	<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	<b>\$0</b>	<b>\$4,270</b>

8 **Emergency clause.** In view of the emergency cited in the preamble, this  
9 legislation takes effect when approved.

10 Amend the bill by relettering or renumbering any nonconsecutive Part letter or  
11 section number to read consecutively.

12 **SUMMARY**

13 This amendment removes from the bill the provisions for designating agriculture  
14 protection areas and requiring a governmental entity to prepare an impact assessment  
15 prior to taking an action that would diminish the value of agricultural property. It  
16 replaces the term "generally accepted agricultural practices" with "best management  
17 practices." It corrects cross-references. This amendment also establishes a study  
18 commission to develop recommendations for protecting farmland.

19 **FISCAL NOTE REQUIRED**  
20 (See attached)



# 123rd MAINE LEGISLATURE

LD 1684

LR 1136(02)

## An Act To Create the Maine Agriculture Protection Act

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

Committee: Agriculture, Conservation and Forestry

Fiscal Note Required: Yes

### Fiscal Note

#### Legislative Cost/Study

	2007-08	2008-09	Projections 2009-10	Projections 2010-11
<b>Appropriations/Allocations</b>				
Other Special Revenue Funds	\$0	\$4,270	\$0	\$0

#### Legislative Cost/Study

This bill includes an Other Special Revenue Funds allocation to the Legislature of \$4,270 in fiscal year 2008-09 to provide funds for the per diem and general operating expenses of the Commission to Study the Protection of Farms and Farmland. If sufficient outside funding has not been received by August 1, 2008 to fully fund all costs of the commission, no meetings are authorized and no expenses of any kind may be incurred or reimbursed.

#### Fiscal Detail and Notes

Additional costs to the Department of Agriculture, Food, and Rural Resources can be absorbed within existing budgeted resources.