

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



123rd MAINE LEGISLATURE

FIRST REGULAR SESSION-2007

Legislative Document

No. 1684

S.P. 591

March 23, 2007

An Act To Create the Maine Agriculture Protection Act

Reference to the Committee on Agriculture, Conservation and Forestry suggested and ordered printed.

A handwritten signature in cursive script, reading 'Joy J. O'Brien', is positioned above the printed name and title.

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator SHERMAN of Aroostook.

Cosponsored by Representative PIEH of Bremen and Senator: RAYE of Washington,
Representatives: BROWNE of Vassalboro, CARTER of Bethel, EDGECOMB of Caribou,
FLOOD of Winthrop, GIFFORD of Lincoln, JOY of Crystal, McLEOD of Lee.

Be it enacted by the People of the State of Maine as follows:

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

3. Commercial farming. "Commercial farming" means the production of any "~~farm~~ agricultural product," as defined by Title 17 ~~7~~, section ~~2805~~ 152, subsection 2, with the intent that that ~~farm~~ agricultural product be sold or otherwise disposed of to generate income.

Sec. 2. 7 MRSA c. 6 is enacted to read:

CHAPTER 6

MAINE AGRICULTURE PROTECTION ACT

§151. Short title

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

§152. Definitions

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

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

2. Agricultural products. "Agricultural products" means those plants and animals and their products that are useful to humans and includes, but is not limited to, forages and sod crops, grains and feed crops, dairy and dairy products, poultry and poultry products, bees and bees' products, livestock and livestock products and fruits, berries, vegetables, flowers, seeds, grasses and other similar products, or any other plant, animal or plant or animal products that supply humans with food, feed, fiber or fur.

3. Agriculture protection area. "Agriculture protection area" means an area designated by the department as being prime agriculture land that should be protected from nonagricultural development pressures.

4. Agricultural support services. "Agricultural support services" means the aerial or surface application of seed, fertilizer, pesticides or soil amendments and custom harvesting.

1 **5. Composting.** "Composting" means the controlled aerobic decomposition of
2 organic materials to produce a soil-like product beneficial to plant growth and suitable for
3 agronomic use.

4 **6. Cropland.** "Cropland" means unforested land used for the production of crops,
5 feed and agricultural products.

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

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

13 **9. Generally accepted agricultural practices.** "Generally accepted agricultural
14 practices" means those practices as defined by the department.

15 **10. Governmental action.** "Governmental action" means the issuance of a rule,
16 policy or guideline adopted for or by a governmental entity or an order or other legally
17 binding directive having the force of law or capable of being enforced by government.
18 "Governmental action" does not mean a formal exercise of power of eminent domain; the
19 adoption, enactment, repeal or amendment of a statute by the Legislature; a governmental
20 action directed or mandated by an order of a court; a law enforcement activity involving a
21 violation of law; or action taken to enforce a mortgage or lien or as a result of police
22 power to prohibit activities that are harmful to the public safety and health.

23 **11. Governmental entity.** "Governmental entity" means a board, authority,
24 commission, department, office or agency of State Government, a local government or a
25 special purpose district.

26 **§153. Agriculture protection area**

27 An area that is designated as an agriculture protection area by the department must be
28 protected from nonagricultural development pressures. To protect these areas, the
29 department shall create land preservation and use plans and policies and establish
30 agricultural areas where substantial agricultural activities are encouraged. The land in
31 these agriculture protection areas is conserved for the production of agricultural products
32 to ensure the preservation of agriculture as a major factor in the economy of the State.

33 **1. Eligibility.** A unit of 250 acres or more of cropland under the ownership of one or
34 more persons is eligible to be designated as an agriculture protection area. The area may
35 also consist of a number of noncontiguous parcels. Each agriculture protection area must
36 have a minimum annual gross income of \$10,000 from the production of agricultural
37 products.

38 **2. Application.** For cropland to be designated as an agriculture protection area, an
39 owner or owners of that cropland must submit an application prepared by the department
40 to the commissioner. The application must include:

1 A. A legal description of the cropland, including the municipal tax map and lot
2 number or numbers;

3 B. Maps that provide the soil types, zoning and flood plan of the cropland; and

4 C. Proof of annual gross income from the production of agricultural products of at
5 least \$10,000 for the previous 3 years.

6 **3. General rule.** A municipality or political subdivision may not enact a law or
7 ordinance that unreasonably restricts farm structures or farm practices within an
8 agriculture protection area unless the law or ordinance bears a direct relationship to
9 public health or safety.

10 **4. Public nuisance.** A municipality or political subdivision law or ordinance
11 defining or prohibiting a public nuisance must exclude from the definition of the nuisance
12 any agricultural activity or operation conducted using normal farming operations within
13 an agriculture protection area as permitted by this chapter if the agricultural activity or
14 operation does not bear a direct relationship to public health or safety.

15 **5. Valuation.** The State Tax Assessor in consultation with the department shall
16 determine the valuation of cropland located in an agriculture protection area.

17 A. The valuation must be the same as that determined in Title 36, sections 1101 to
18 1121.

19 B. The valuation may be reviewed biannually and must remain in effect as long as
20 the cropland remains in production.

21 C. The owner of the property shall annually on or before April 1st provide
22 documentation that the cropland remains in an agriculture protection area.

23 **6. Penalty.** The penalty for withdrawal from the agriculture protection area is the
24 taxes that would have been assessed upon the land for the past year, less all taxes that
25 were actually paid in the past year, plus interest at the rate set annually by the
26 municipality during the previous year.

27 **§154. Farm; farm operation or agricultural composting operation not a nuisance**

28 A farm, farm operation or agricultural composting operation may not be considered a
29 public or private nuisance if the farm, farm operation or agricultural composting
30 operation alleged to be a nuisance is in compliance with applicable state and federal laws,
31 rules and regulations and:

32 **1. Farm; farm operation; agricultural composting operation.** The farm, farm
33 operation or agricultural composting operation conforms to generally accepted
34 agricultural practices, as determined by the commissioner in accordance with Title 5,
35 chapter 375;

36 **2. Storage or use of farm nutrients; complaints.** For complaints regarding the
37 storage or use of farm nutrients as defined in section 4201, subsection 4, the farm, farm
38 operation or agricultural composting operation has implemented a nutrient management

1 plan developed in accordance with section 4204 and operation of the farm, farm operation
2 or agricultural composting operation is consistent with the nutrient management plan; or

3 **3. Change in land use; occupancy of land.** The farm, farm operation or
4 agricultural composting operation existed before a change in the land use or occupancy of
5 land within one mile of the boundaries of the farm, farm operation or agricultural
6 composting operation as long as, before the change in land use or occupancy, the farm,
7 farm operation or agricultural composting operation would not have been considered a
8 nuisance. This paragraph does not apply to a farm, farm operation or agricultural
9 composting operation that materially changes the conditions or nature of the farm, farm
10 operation or agricultural composting operation after a change in the land use or
11 occupancy of land within one mile of the boundaries of the farm, farm operation or
12 agricultural composting operation. Nothing in this paragraph affects the applicability of
13 any of the other provisions of this section.

14 **§155. Violation of municipal ordinances**

15 A method of operation used by a farm or farm operation located in an area where
16 agricultural activities are permitted may not be considered a violation of a municipal
17 ordinance if the method of operation constitutes a generally accepted agricultural practice
18 as determined by the department.

19 **§156. Application; municipal ordinances**

20 This section does not affect the application of state and federal laws. After the
21 effective date of this section, a municipality must provide the commissioner with a copy
22 of any proposed ordinance that affects farm operations. The clerk of the municipality or a
23 municipal official designated by the clerk shall submit a copy of the proposed ordinance
24 to the commissioner at least 90 days prior to the meeting of the legislative body or public
25 hearing at which adoption of the ordinance will be considered. The commissioner shall
26 review the proposed ordinance and advise the municipality as to whether the proposed
27 ordinance restricts or prohibits the use of generally accepted agricultural practices. This
28 section does not affect municipal authority to enact ordinances.

29 **§157. Minimization of impact of governmental action**

30 To minimize the impact of governmental action affecting private agricultural
31 property, a governmental entity shall:

32 **1. Diminution in value.** Avoid diminution in value of agricultural property;

33 **2. Expedite decision.** Expedite a decision by the entity in cases in which a delay of
34 the decision will substantially interfere with the use or value of agricultural property
35 rights; and

36 **3. Avoid delays in compensating owners.** Avoid unnecessary delays in
37 compensating owners of agricultural property when diminution in value occurs by
38 governmental action.

1 **§158. Impact assessment**

2 A governmental entity shall prepare a written assessment of any proposed
3 governmental action prior to taking any proposed action that results in a diminution in
4 value of agricultural property. The written assessment must include:

5 **1. Identification of governmental action.** A clear and specific identification of the
6 governmental action and the purpose of the governmental action;

7 **2. Affected agricultural property.** Whether the governmental action would result
8 in a diminution in value to the affected agricultural property. If so, the extent of the
9 diminution in value;

10 **3. Alternatives.** Alternatives to the proposed action that would lessen or eliminate
11 any adverse impact on the agricultural property; and

12 **4. Source of payments.** The source of payments in the entity's budget or otherwise
13 for any compensation that may be in order.

14 **§159. Complaint resolution**

15 The commissioner shall investigate all complaints involving a farm, farm operation
16 or agricultural composting operation, including, but not limited to, complaints involving
17 the use of waste products, groundwater and surface water pollution and insect
18 infestations. In cases of insect infestations not arising from agricultural activities, when
19 the State Entomologist believes that the infestation is a public nuisance and is able to
20 identify the source or sources of the infestation, the commissioner shall refer the matter to
21 the Department of the Attorney General. If the commissioner finds upon investigation
22 that the person responsible for the farm, farm operation or agricultural composting
23 operation is using generally accepted agricultural practices, the commissioner shall notify
24 that person and the complainant of this finding in writing. Notwithstanding section 154,
25 if the commissioner identifies the source or sources of the problem and finds that the
26 problem is caused by the use of other than generally accepted agricultural practices, the
27 commissioner shall:

28 **1. Changes.** Determine the changes needed in the farm, farm operation or
29 agricultural composting operation to comply with generally accepted agricultural
30 practices and prescribe site-specific generally accepted agricultural practices for that
31 farm, farm operation or agricultural composting operation;

32 **2. Advise person responsible.** Advise the person responsible for the farm, farm
33 operation or agricultural composting operation of the changes, as determined in
34 subsection 1, that are necessary to conform with generally accepted agricultural practices
35 and determine subsequently if those changes are implemented; and

36 **3. Findings.** Give the findings of the initial investigation and subsequent
37 investigations and any determination of compliance to the complainant and person
38 responsible.

1 **§160. Good faith**

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

7 **§161. Failure to adopt generally accepted agricultural practices**

8 If the person responsible for a farm, farm operation or agricultural composting
9 operation does not apply generally accepted agricultural practices as required by the
10 commissioner, the commissioner shall send a written report to an appropriate agency if a
11 federal or state law has been violated and to the Attorney General. The Attorney General
12 may institute an action to abate a nuisance or to enforce the provisions of this section or
13 any other applicable state law, and the court may order the abatement with costs as
14 provided under Title 17, section 2702, such injunctive relief as provided in this section or
15 by other applicable law, or that a civil violation has been committed. Failure to apply
16 generally accepted agricultural practices in accordance with this section constitutes a
17 separate civil violation for which a fine of up to \$1,000, together with an additional fine
18 of up to \$250 per day for every day that the violation continues, may be adjudged.

19 **§162. Agricultural Complaint Response Fund**

20 There is established the nonlapsing Agricultural Complaint Response Fund. The
21 commissioner may accept from any source funds designated to be placed in the fund. The
22 commissioner may authorize expenses from the fund as necessary to investigate
23 complaints involving a farm, farm operation or agricultural composting operation and to
24 abate conditions potentially resulting from farms, farm operations or agricultural
25 composting operations.

26 **§163. Educational outreach**

27 The commissioner shall conduct an educational outreach program for the agricultural
28 community to increase awareness of the provisions of this chapter and the generally
29 accepted agricultural practices of the department. The commissioner shall inform the
30 public about the provisions of this chapter, the complaint resolution process adopted by
31 the department and state policy with respect to preservation and protection of agricultural
32 and natural resources.

33 **§164. Rules**

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

37 **Sec. 3. 7 MRSA §4203, sub-§1, ¶C,** as enacted by PL 2003, c. 283, §2, is
38 amended to read:

1 C. When an aggrieved party within 30 days of the commissioner's decision appeals
2 a decision of the commissioner regarding site-specific ~~best management~~ generally
3 accepted agricultural practices prescribed for a farm or other issue governed under
4 section 159 or Title 17, section 2701-B ~~or 2805~~, the board shall hold a hearing in
5 accordance with Title 5, chapter 375, subchapter 4. The board may affirm, amend or
6 reverse a decision made by the commissioner. The board's decision is a final agency
7 action. The board may also conduct an information-gathering meeting at the request
8 of the department or any party with a legitimate interest to facilitate the complaint
9 resolution process under section 159 or Title 17, section 2701-B ~~or 2805~~.

10 **Sec. 4. 7 MRSA §4203, sub-§2-A**, as enacted by PL 2003, c. 283, §3, is amended
11 to read:

12 **2-A. Temporary membership.** When the subject matter of an appeal or complaint
13 resolution process under this section is other than manure or nutrient management, the
14 commissioner may appoint up to 3 temporary board members for the purpose of hearing
15 an appeal, conducting an information-gathering meeting or facilitating the complaint
16 resolution process under ~~Title 17, section 2805~~ 157. At least one temporary member
17 must have expertise with the subject matter of the complaint or problem and one
18 temporary member must represent the agricultural sector involved. The terms for
19 temporary members expire when the board determines that it has taken final action on the
20 appeal or complaint resolution process.

21 **Sec. 5. 12 MRSA §6-A, sub-§2**, as enacted by PL 1989, c. 478, §2, is amended to
22 read:

23 **2. Crop-producing.** Includes only land where agricultural chemicals, as defined in
24 Title 7, section 52, were used in the production of ~~farm~~ agricultural products, as defined
25 in Title 17 7, section ~~2805~~ 152, subsection 2, in 3 or more of the previous 6 calendar
26 years; and

27 **Sec. 6. 17 MRSA §2805**, as amended by PL 2005, c. 638, §1, is repealed.

28 **Sec. 7. 36 MRSA §2013, sub-§1, ¶A**, as amended by PL 2005, c. 638, §2, is
29 further amended to read:

30 A. "Commercial agricultural production" means commercial production of crops for
31 human and animal consumption, including the commercial production of sod, an
32 agricultural composting operation as defined in Title 17 7, section 2805 152,
33 subsection 1, the commercial production of seed to be used primarily to raise crops
34 for nourishment of humans or animals and the production of livestock.

35 **Sec. 8. 37-B MRSA §801, sub-§4, ¶B**, as enacted by PL 1989, c. 464, §3, is
36 amended to read:

37 B. Owners and operators of commercial agricultural operations ~~shall be~~ are exempt
38 from the fee requirements under this section for registering agricultural facilities and
39 for hazardous materials used in the commercial production of ~~farm~~ agricultural
40 products as defined in Title 17 7, section ~~2805~~ 152, subsection 1, ~~paragraph C 2.~~
41 Farm Agricultural product processing facilities are not exempt from the fee

1 requirements. For the purposes of this section, "processing" ~~shall~~ does not include
2 the packaging of raw commodities or ~~farm~~ agricultural products for resale.

3 **Sec. 9. 38 MRSA §480-Y, sub-§2, ¶A,** as enacted by PL 1995, c. 659, §1, is
4 amended to read:

5 A. The farm must have an irrigation management plan, referred to in this section as
6 the "irrigation plan." The irrigation plan must identify the total number of irrigated
7 acres on the farm or on a specified management unit, the amount of water needed, the
8 potential sources of water for irrigating the field and the water management practices
9 that will be used to ensure that the amount of water used for crop irrigation will be
10 kept to a minimum. For the purposes of this subsection, "farm" has the same
11 meaning as in Title ~~17~~ 7, section ~~2805~~ 152, subsection 7.

12 SUMMARY

13 This bill repeals the Maine Revised Statutes, Title 17, section 2805, which deals with
14 certain farms or farm operations that are exempt from being classified as a nuisance and
15 with the use of best management practices. The bill also establishes the Agriculture
16 Protection Act in Title 7. The bill establishes incentives to conserve and protect current
17 agricultural land and enterprises and to further encourage agricultural development. The
18 bill also allows the State to create agriculture protection areas to foster and strengthen
19 agriculture development.