

MAINE STATE LEGISLATURE

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L.D. 1954

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Date: 3/26/08

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AGRICULTURE, CONSERVATION AND FORESTRY

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STATE OF MAINE

6

HOUSE OF REPRESENTATIVES

7

123RD LEGISLATURE

8

SECOND REGULAR SESSION

9

COMMITTEE AMENDMENT "A" to H.P. 1392, L.D. 1954, Bill, "An Act To
10 Amend the Potato Cull Pile Law"

11

Amend the bill by striking out everything after the title and before the summary and
12 inserting in its place the 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, enforcement of laws requiring proper disposal of cull potatoes and
16 maintenance of cull potato piles is essential to minimize the threat of disease; and

17

Whereas, revisions to the laws governing cull potatoes are needed; and

18

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

22

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

23

Sec. 1. 7 MRSA §1007-A, as amended by PL 2005, c. 512, §43, is further
24 amended to read:

25

§1007-A. Improperly maintaining cull potato piles; public nuisance

26

1. Declaration of public nuisance. The Legislature declares that the A2 strain of
27 late blight and other potato diseases constitute a clear and present danger to the potato
28 industry in the State, which is a significant part of the State's economy. Control of the A2
29 strain of potato blight and other potato diseases requires the proper disposal of ~~potato~~ cull
30 potato piles. The Legislature finds it necessary to exercise the police power of the State
31 to require proper disposal of cull potatoes and ~~potato~~ cull potato piles and to provide
32 procedures for the disposal of these potatoes by the department when the ~~owner~~
33 responsible party fails to comply with the requirements of this section. In addition to

COMMITTEE AMENDMENT

1 constituting a civil violation as prescribed in this section, ~~potato~~ cull potato piles that are
2 not managed and disposed of in accordance with these requirements are considered a
3 public nuisance and are subject to action under Title 17, chapter 91.

4 **1-A. Definitions.** As used in this section, unless the context otherwise indicates, the
5 following terms have the following meanings.

6 **A. "Cull potatoes" means:**

7 (1) Potatoes that are not marketable or usable for human consumption or as seed
8 potatoes;

9 (2) Potatoes that are used for animal feed;

10 (3) The residue potatoes left in the field from commercial or seed potato
11 production the preceding year; and

12 (4) Potatoes that spoil while in storage.

13 **B. "Responsible party" means the owner or lessee of the property on which cull**
14 **potatoes are found or another person determined to be responsible for the potatoes in**
15 **accordance with rules adopted under subsection 3.**

16 **2. Disposal requirements; maintenance of cull potato piles.** ~~The owner or lessee~~
17 ~~of any real property on which potatoes are grown, or on which potato cull piles are~~
18 ~~maintained or disposed of, shall properly dispose of potato culls and cull piles in order to~~
19 ~~destroy the A2 strain of potato blight and other potato diseases. The commissioner shall~~
20 ~~adopt rules in accordance with subsection 3 to prescribe the proper acceptable methods~~
21 ~~for disposal of potato culls cull potatoes and potato establish best management practices~~
22 ~~for maintaining cull potato piles. Rules adopted pursuant to this section are routine~~
23 ~~technical rules as defined in Title 5, chapter 375, subchapter II A. Proper disposal must~~
24 ~~occur on or before June 10th of each year. No cull piles may be maintained between June~~
25 ~~10th and October 1st of each year. By emergency or other rule making procedures, the~~
26 ~~commissioner may vary these dates when the type of disposal method or other~~
27 ~~circumstances require that cull piles be destroyed in order to prevent the spread of~~
28 ~~significant disease. Except as provided in rules adopted under subsection 3, all cull~~
29 ~~potatoes must be properly disposed of on or before June 10th of each year. A person who~~
30 ~~keeps a pile of cull potatoes shall maintain the pile in accordance with best management~~
31 ~~practices. Upon inspection authorized under subsection 4, the commissioner may~~
32 ~~determine site-specific best management practices for a pile of cull potatoes and order the~~
33 ~~responsible party to comply with these practices.~~

34 **3. Rules.** The commissioner ~~may~~ shall adopt any rules necessary to implement this
35 section in accordance with the Maine Administrative Procedure Act, except that the
36 commissioner may shorten or suspend the notice and hearing requirements as necessary
37 to respond to ~~any an imminent~~ threat of disease. ~~Prior to adopting any rules under this~~
38 ~~section, the commissioner shall consult with the Maine Potato Board except in an~~
39 ~~emergency. In addition, the commissioner may determine best management practices for~~
40 ~~the handling of cull potatoes and cull piles in accordance with Title 17, section 2805. The~~
41 ~~commissioner shall adopt a set of best management practices for the maintenance of cull~~
42 ~~potato piles between June 10th and October 1st and may adopt a different set of best~~
43 ~~management practices applicable to piles maintained between October 1st of one year and~~

COMMITTEE AMENDMENT "A" to H.P. 1392, L.D. 1954

1 June 10th of the following year. The commissioner may use emergency rulemaking to
2 temporarily vary:

3 A. The dates established in subsection 2 when circumstances require that cull
4 potatoes be disposed of prior to the June 10th date to prevent or minimize the spread
5 of disease;

6 B. The dates established in subsection 2 when weather or economic circumstances
7 allow an extension of the time period during which cull potato piles may be
8 maintained without significantly increasing the threat of disease; and

9 C. The best management practices prescribed for maintaining cull potato piles when
10 these practices are found inadequate to protect against an imminent threat.

11 Except in an emergency, the commissioner shall consult with the Maine Potato Board
12 prior to adopting rules under this section. Rules adopted pursuant to this subsection are
13 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

14 **4. Department action.** The commissioner may take action to properly dispose of
15 ~~potato culls or manage cull potatoes~~ and cull potato piles that violate the requirements of
16 this section or any rules of the commissioner adopted to implement this section. The
17 commissioner or the commissioner's designee is authorized to enter any property to
18 inspect ~~potato~~ cull potato piles and to take any action required to secure their proper
19 disposal or management. Designated representatives of the commissioner may, without
20 search warrant, enter at reasonable times any real property, other than a building, where
21 potatoes are grown, stored, packed, loaded for shipment or handled, and may enter any
22 building, either with the consent of the owner, lessee, occupant or agent or pursuant to an
23 administrative search warrant. Notwithstanding the Maine Rules of Civil Procedure,
24 Rule 80E, paragraph (b), the commissioner or the commissioner's designee may obtain an
25 administrative search warrant pursuant to this section by describing the premises to be
26 entered and the purpose of the inspection or other authorized action and by demonstrating
27 that the entry is necessary in order to inspect potato cull piles or otherwise carry out the
28 requirements of this section. This demonstration is deemed to be a demonstration of
29 probable cause.

30 The costs incurred by the department in removing and properly disposing of or managing
31 cull potatoes and cull potato piles must be reimbursed by the ~~owner or lessee of the~~
32 ~~property on which the potatoes were found or any other person responsible for the~~
33 ~~potatoes~~ responsible party or parties, each of whom is jointly and severally liable for
34 those costs to the department. The department, its employees and agents and any person
35 acting on behalf of the department are not liable for any action taken pursuant to this
36 section.

37 **5. Potato Cull Removal Fund.** The Potato Cull Removal Fund is established to be
38 used by the department to administer and enforce the provisions of this section and to pay
39 any expenses of ~~potato~~ cull potato management, removal ~~and~~ or disposal. The
40 commissioner may receive funds from any source to be deposited into this fund, which
41 does not lapse. If at any time the balance of the fund falls below \$15,000, any penalties
42 collected under this section must be deposited into the fund. Otherwise, penalties
43 collected must be deposited into the General Fund.



123rd MAINE LEGISLATURE

LD 1954

LR 3085(02)

An Act To Amend the Potato Cull Pile Law

Fiscal Note for Bill as Amended by Committee Amendment "A"
Committee: Agriculture, Conservation and Forestry
Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund
Minor revenue increase - General Fund

Correctional and Judicial Impact Statements

Establishes new civil violations. The collection of additional fines may also increase General Fund revenue by minor amounts.

Fiscal Detail and Notes

Additional costs to the Department of Agriculture associated with rulemaking can be absorbed within existing budgeted resources.