

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1133

S.P. 424

In Senate, March 25, 2009

An Act To Implement the Recommendations of the Commission To Study the Protection of Farms and Farmland

Reported by Senator NUTTING of Androscoggin for the Joint Standing Committee on Agriculture, Conservation and Forestry pursuant to Public Law 2007, chapter 649, section 11, subsection 6.

Reference to the Committee on Agriculture, Conservation and Forestry suggested and ordered printed under Joint Rule 218.

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

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

2 **PART A**

3 **Sec. A-1. 7 MRSA §162** is enacted to read:

4 **§162. Designation of "Farming for Maine" farms**

5 The commissioner shall establish a process for designating "Farming for Maine"
6 farms. This designation provides farmers an opportunity to declare their commitment to
7 commercial agriculture and to increase public awareness of farming in the State.

8 **1. Application.** An applicant for designation as a "Farming for Maine" farm shall
9 submit a completed application that has been verified in accordance with subsection 3 to
10 the clerk for the municipality in which the farm is located and a copy of the application to
11 the department. If the land is within an area under the jurisdiction of the Maine Land Use
12 Regulation Commission, the applicant shall submit the verified application to the
13 executive director of the commission and a copy to the department. The department shall
14 develop an application form and make the form available through the offices of the soil
15 and water conservation districts and private organizations and public agencies that
16 support or represent farmers in the State.

17 **2. Eligibility.** A farm is eligible for designation under this section if the following
18 criteria are met:

19 **A.** The farm consists of land classified as prime farmland, land of statewide or local
20 importance or unique farmland by the Natural Resources Conservation Service within
21 the United States Department of Agriculture. In counties where land of local
22 importance has not been identified, land that is actively farmed may be eligible as
23 provided in rules adopted under subsection 4;

24 **B.** The land is used for the commercial production of agricultural products; and

25 **C.** Additional criteria established in rules adopted under subsection 4.

26 A farm that is farmed under a lease may be designated as long as the landowner and the
27 lessee sign the application.

28 **3. Verification of eligibility.** An applicant for designation as a "Farming for Maine"
29 farm shall submit a completed application form together with support materials as
30 required in rules adopted under subsection 4 to a soil and water conservation district
31 office. Upon receipt of an application, a district office shall verify the eligibility of the
32 farm or notify the applicant of the reasons why verification is denied. Upon request, the
33 department shall assist a district in determining eligibility.

34 **4. Rules; recognition.** The commissioner may adopt rules to further define the
35 verification process and establish additional eligibility criteria as needed for designation
36 of "Farming for Maine" farms. The commissioner shall provide signs or certificates or
37 develop other means of recognizing a farm that has attained designation as a "Farming for
38 Maine" farm.

1 5. Fee. A municipality may charge a fee of not more than \$20 for filing a verified
2 designation application under this section.

3 **Sec. A-2. 7 MRSA §163** is enacted to read:

4 **§163. Pilot program for establishing agricultural districts and agriculture**
5 **enhancement groups**

6 The commissioner may establish a pilot program to examine the effectiveness of
7 agricultural districts in keeping farmland in agricultural production and enhancing the
8 profitability of farming. For the purposes of this section, "an agricultural districts
9 program" is a program that allows farmers to propose that the department designate their
10 farmland as a geographic area where commercial agriculture is encouraged and farmland
11 protected through collaborative efforts at the state and local level.

12 The commissioner may also facilitate the voluntary formation of shared interest
13 affiliations to more efficiently access business and marketing information and assistance.

14 **1. Eligibility criteria for agricultural districts.** In order to be eligible to participate
15 in the pilot program, farms must form agricultural districts. An agricultural district must
16 be composed of 3 or more farms that experience similar production and marketing
17 opportunities and constraints due to regional characteristics such as climate, soils, the
18 availability of affordable farmland, infrastructure and access to services and markets.
19 The commissioner shall review eligibility criteria for participants in agricultural districts
20 in other states and may develop additional criteria for participation with the pilot
21 program, including, but not limited, to minimum acreage and farm income thresholds.

22 **2. Formation of agriculture enhancement groups.** The commissioner may
23 promote the formation of agriculture enhancement groups based on challenges and
24 opportunities shared by 3 or more farmers due to the agricultural products being produced
25 or other interests shared by the farm enterprises comprising the group. The commissioner
26 shall offer assistance to these groups as resources allow.

27 **3. Benefits.** The commissioner shall review benefits accruing to participants in
28 agricultural districts in other states. Prior to initiating a pilot program, the commissioner
29 shall develop a description of potential benefits accruing to participants in a pilot
30 program. Potential benefits may include, but are not limited to, scoring bonuses for
31 competitive grants, loans or business assistance programs and for project proposals
32 screened for submission to the Land for Maine's Future Fund under Title 5, section 6203.
33 The commissioner shall consult with other agencies administering programs affected by
34 the proposed benefits.

35 **4. Selection of regions.** The commissioner shall distribute a description of the
36 purpose and potential benefits of forming an agricultural district. Distribution may be
37 through public agencies and private organizations that have regular contact with farmers
38 in the State. The description must be posted on the department's publicly accessible
39 website. The description notice must include information on how to contact the
40 department to express interest in learning more about or participating in an agricultural
41 district.

1 Based on the response to the initial solicitation, the commissioner may select one or more
2 regions in which to develop an agricultural district. Prior to making a selection, the
3 commissioner shall communicate with local or regional planning commissions and state,
4 local or regional land trusts to ascertain their willingness to participate in efforts to
5 protect farmland in the region.

6 If more than one region is selected to participate in the pilot program, the commissioner
7 shall strive to select regions in different parts of the State and representing different
8 sectors of the State's agricultural economy.

9 **Sec. A-3. Duties of the Commissioner of Agriculture, Food and Rural**
10 **Resources with regard to the designation of "Farming for Maine" farms.** The
11 Commissioner of Agriculture, Food and Rural Resources shall send a letter to municipal
12 officials explaining the purpose of designating "Farming for Maine" farms under the
13 Maine Revised Statutes, Title 7, section 162. The commissioner, in consultation with the
14 Executive Department, State Planning Office, shall communicate ways that a
15 municipality could use the record of designations to assist local planning boards and to
16 solicit farmers' input in land use planning discussions.

17 The commissioner shall report to the Joint Standing Committee on Agriculture,
18 Conservation and Forestry no later than February 15, 2010 on the development of any
19 additional eligibility criteria, the number of farmers seeking designation as a "Farming for
20 Maine" farm, overall interest in the designation program and regions displaying the most
21 interest. The commissioner shall present the committee with recommendations to
22 increase participation, including possible incentives and an estimate of the cost to
23 implement any of the commissioner's recommendations.

24 **Sec. A-4. Report on pilot program.** The Commissioner of Agriculture, Food
25 and Rural Resources shall report to the Joint Standing Committee on Agriculture,
26 Conservation and Forestry no later than February 15, 2010 on any progress made in
27 initiating a pilot program to examine the effectiveness of agricultural districts under the
28 Maine Revised Statutes, Title 7, section 163. The commissioner shall summarize
29 discussions on appropriate eligibility criteria and benefits for an agricultural districts
30 program and the names and affiliations of people participating in these discussions. The
31 commissioner shall provide an estimate of the resources needed to proceed with a pilot
32 program if one has not been undertaken.

33 **Sec. A-5. Monitoring federal estate tax changes.** Beginning in calendar year
34 2009, the Department of Agriculture, Food and Rural Resources and the State Tax
35 Assessor shall jointly monitor changes in the federal estate tax on an annual basis and
36 identify the impact of the tax provisions on the preservation of farmland in the State. By
37 January 15th of each year beginning in 2010, the department and the assessor shall
38 provide the joint standing committees of the Legislature having jurisdiction over
39 agricultural matters and taxation matters with a written update of their monitoring activity
40 and may make recommendations for changes to the State's estate tax that will facilitate
41 the preservation of farmland. The joint standing committee of the Legislature having
42 jurisdiction over taxation matters may introduce legislation related to this review.

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PART B

Sec. B-1. 7 MRSA §164 is enacted to read:

§164. Farmland Preservation Fund

1. Fund established. The Farmland Preservation Fund, referred to in this section as "the fund," is established as an interest-bearing account within the department and administered by the commissioner. The fund does not lapse and must be held separate from all other accounts. Any balance remaining in the fund at the end of the fiscal year must be carried forward. The fund receives deposits under Title 38, section 480-D-1, subsection 6. The commissioner may accept contributions from any private or public source for the purposes identified in subsection 2 and shall deposit such contributions into the fund.

2. Use of fund proceeds. Money deposited into the fund and the earnings on that money must be used to acquire farmland or interest in farmland determined to be significant for maintaining an agricultural land base. The commissioner shall develop criteria for evaluating potential acquisitions. Money from the fund may be used in conjunction with the Land for Maine's Future Fund established under Title 5, section 6203 to acquire farmland or interest in farmland.

Sec. B-2. 38 MRSA §480-D-1 is enacted to read:

§480-D-1. Standards and requirements for activities and development undertaken with state or federal funding and potentially impacting farmland

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

A. "Farmland" means a parcel consisting of 5 or more acres of land that is:

(1) Classified as prime farmland, unique farmland or farmland of statewide or local importance by the Natural Resources Conservation Service within the United States Department of Agriculture; and

(2) Used or capable of use without substantial modification for the production of agricultural products as defined in Title 7, section 152, subsection 2.

B. "Mitigation" means any action taken or not taken to avoid, minimize, rectify, reduce, eliminate or compensate for any actual or potential adverse impact on farmland.

2. Activities subject to additional requirements. An activity or development requiring a permit under this article or approval under article 6 is subject to additional standards and processing requirements under this section if:

A. The activity or development is part of a project partially or fully funded with state or federal money; and

B. The activity or development has the potential to convert farmland to a nonagricultural use or diminish the value of farmland for agricultural production.

1 **3. Additional application materials.** An applicant for a permit or approval subject
2 to subsection 2 shall submit with the application a map indicating the soils classification
3 for the area within and adjacent to the project's boundaries and any additional information
4 required under rules adopted pursuant to subsection 7.

5 **4. Review by the Department of Agriculture, Food and Rural Resources.** Upon
6 receipt of an application subject to this section, the department shall send a copy of the
7 application and any supporting materials to the Department of Agriculture, Food and
8 Rural Resources. The Department of Agriculture, Food and Rural Resources shall review
9 the application materials and may consult with any state or federal agency to assess the
10 potential impact of the proposed project on farmland. Within 30 days of receiving the
11 application materials, the Commissioner of Agriculture, Food and Rural Resources shall
12 provide the department with the assessment.

13 If no significant impact on farmland is foreseen, the department may issue a permit for or
14 approve the proposed activity or development without further input from the Department
15 of Agriculture, Food and Rural Resources.

16 If the Commissioner of Agriculture, Food and Rural Resources determines that the
17 proposed activity or development is likely to significantly impact farmland, the
18 Commissioner of Agriculture, Food and Rural Resources shall advise the department of
19 the time needed to complete a more detailed land evaluation and site assessment under
20 subsection 5.

21 **5. Impact assessment.** Notwithstanding any other provision of law, when the
22 Commissioner of Agriculture, Food and Rural Resources determines that a proposed
23 activity or development is likely to significantly impact farmland, the department may not
24 issue a permit or grant approval for the activity or development until an impact
25 assessment has been completed.

26 The Commissioner of Agriculture, Food and Rural Resources, working with the Natural
27 Resources Conservation Service within the United States Department of Agriculture,
28 shall develop and periodically revise land evaluation and site assessment tools
29 appropriate for determining the relative agricultural importance of farmland and to
30 provide an objective basis on which a permit or approval can be issued, denied or issued
31 with mitigation requirements.

32 **6. Mitigation; fund.** When mitigation with respect to an application subject to this
33 section requires a monetary compensation for any actual or potential adverse impact on
34 farmland, the department shall collect the determined amount from the applicant and
35 deposit it into the Farmland Preservation Fund established in Title 7, section 164.

36 **7. Rules.** The commissioner, in consultation with Commissioner of Agriculture,
37 Food and Rural Resources, shall adopt rules necessary to implement this section,
38 including, but not limited to, establishing additional materials to be included with an
39 application, a scoring system for assessing impact of farmland and mitigation options.
40 Rules adopted under this subsection are routine technical rules as defined in Title 5,
41 chapter 375, subchapter 2-A.

1 8. Relationship to other provisions. Cranberry cultivation activities eligible for a
2 general permit under section 480-U are exempt from this section. Creation of agricultural
3 irrigation ponds eligible for a general permit under section 480-Y are exempt from this
4 section.

5 **Sec. B-3. 38 MRSA §483-B** is enacted to read:

6 **§483-B. Standards and requirements for development undertaken with state or**
7 **federal funding and potentially impacting farmland**

8 In addition to meeting the standards under section 484, approval of development
9 under this article is subject to section 480-D-1.

10 **Sec. B-4. Directive to the State Board of Education to amend rules for**
11 **new school siting approval.** The State Board of Education shall amend the rule
12 governing new school siting approval authorized under Public Law 1999, chapter 776,
13 section 21 and adopted as Department of Education Rule 05-071, Chapter 60 to require
14 consideration of any proposed conversion of farmland or impact on farmland adjacent to
15 the proposed site. Notwithstanding Public Law 1999, chapter 776, section 21 and the
16 Maine Revised Statutes, Title 5, section 8072, subsection 3, the amendment provisionally
17 adopted under this section must be reviewed by the joint standing committees of the
18 Legislature having jurisdiction over agricultural matters and education matters.

19 **PART C**

20 **Sec. C-1. 12 MRSA §1812, first ¶,** as amended by PL 2001, c. 466, §3, is further
21 amended to read:

22 With the consent of the Governor and the commissioner, the director may acquire on
23 behalf of the State land or any interests in land within this State, with or without
24 improvements, by purchase, gift or eminent domain for purposes of holding and
25 managing the same as parks or historic sites. When acquiring land or interest in land, the
26 director shall examine options for obtaining public vehicular access rights to the land. If
27 an acquisition is made that does not include guaranteed public vehicular access, the
28 director shall describe the acquisition in the report required under section 1817 and the
29 justification for that acquisition. The right of eminent domain may not be exercised to
30 take any area or areas for any one park that singly or collectively exceed 200 acres, nor
31 may it be exercised to take any developed or undeveloped mill site or water power
32 privilege in whole or in part or any land used or useful in connection therewith or any
33 land being used for an industrial enterprise. The right of eminent domain may not be
34 exercised to acquire farmland or interest in farmland for the purpose of recreational use or
35 securing aesthetic or therapeutic benefits for the public. For the purposes of this section,
36 "farmland" means land that is used for the commercial production of agricultural products
37 as defined in Title 7, section 152, subsection 2.

38 **Sec. C-2. 12 MRSA §1813, first ¶,** as enacted by PL 1997, c. 678, §13, is
39 amended to read:

1 For the purpose of establishing, preserving or enhancing corridors for use for open
2 space or recreation, the director may acquire with the consent of the Governor and the
3 commissioner, by license, lease, purchase, gift or eminent domain, railroad rights-of-way
4 upon which rail service is no longer operated except that the right of eminent domain may
5 not be exercised to acquire farmland or interest in farmland for the purpose of
6 recreational use or securing aesthetic or therapeutic benefits for the public. When
7 railroad rights-of-way or interests in railroad rights-of-way are taken by eminent domain,
8 the proceedings must be in accordance with this section and are not subject to Title 35-A,
9 chapter 65. For purposes of these acquisitions, the term "owner" as used in this section
10 means the person holding the dominant rights in the property immediately prior to the
11 termination of the operation of rail service and that person's successors and assigns.
12 Acquisitions pursuant to this subsection are not subject to any limitation in acreage. For
13 the purposes of this section, "farmland" means land that is used for the commercial
14 production of agricultural products as defined in Title 7, section 152, subsection 2.

15 **Sec. C-3. 12 MRSA §1892, 2nd ¶,** as enacted by PL 1997, c. 678, §13, is
16 amended to read:

17 If all reasonable efforts to acquire lands or interests therein by negotiation have failed
18 and public exigency requires it, the director, with the consent of the Governor and the
19 commissioner, may utilize the power of eminent domain to acquire any land determined
20 necessary to provide passage via the most direct or practicable connecting trail right-of-
21 way across such lands; however, not more than 25 acres in any one mile may be acquired
22 without consent of the owner and that owner and adjacent landowners may not be
23 precluded from using motorized vehicles across such trails to maintain reasonable access
24 to their fee or other interests in land. The right of eminent domain may not be exercised to
25 acquire farmland or interest in farmland under this section. For the purposes of this
26 section, "farmland" means land that is used for the commercial production of agricultural
27 products as defined in Title 7, section 152, subsection 2.

28 **Sec. C-4. 12 MRSA §10109, sub-§1,** as affected by PL 2003, c. 614, §9 and
29 amended by c. 655, Pt. B, §31 and affected by §422, is further amended to read:

30 **1. Acquisition of land; wildlife management and public access.** The Except as
31 provided in subsection 5, the commissioner may acquire property pursuant to this
32 subsection for fish hatchery or fish feeding stations or wildlife management areas or
33 public access sites.

34 A. The commissioner may acquire in the name of the State, by gift, bequest or
35 otherwise, real and personal property for the location, construction and convenient
36 operation of a fish hatchery or fish feeding station or a wildlife management area or
37 public access sites to inland or coastal waters. When acquiring land or interest in
38 land for a wildlife management area or for a public access site, the commissioner
39 shall examine options for obtaining public vehicular access rights to the land. If an
40 acquisition is made that does not include guaranteed public vehicular access, the
41 commissioner shall describe the acquisition in the annual report submitted pursuant to
42 section 10103, subsection 11 and the justification for that acquisition.

1 B. The commissioner may purchase, lease or take and hold, for and on behalf of the
2 State as for public uses, land and all materials in and upon it or any rights necessary
3 for the purpose of establishing, erecting and operating fish hatcheries or fish feeding
4 stations or wildlife management areas or public access sites to inland or coastal
5 waters.

6 C. When the commissioner finds that a public need requires the taking of any land or
7 rights for the purposes set out in this subsection, the commissioner shall cause the
8 land or rights to be surveyed, located and described so that the land or rights can be
9 located.

10 D. A plan of the land or rights must be filed and recorded in the registry of deeds
11 where the land or rights are located.

12 E. The filing of the plan and description vests the title to the land and right in the
13 State or its grantees, to be held at the pleasure of the State.

14 **Sec. C-5. 12 MRSA §10109, sub-§5** is enacted to read:

15 5. Acquisition of farmland. The right of eminent domain may not be exercised to
16 acquire farmland or interest in farmland under this section. For the purposes of this
17 section, "farmland" means land that is used for the commercial production of agricultural
18 products as defined in Title 7, section 152, subsection 2.

19 **PART D**

20 **Sec. D-1. 30-A MRSA §4401, sub-§2-B** is enacted to read:

21 2-B. Farmland. "Farmland" means a parcel consisting of 5 or more acres of land
22 that is:

23 A. Classified as prime farmland, unique farmland or farmland of statewide or local
24 importance by the Natural Resources Conservation Service within the United States
25 Department of Agriculture; and

26 B. Used or capable of use without substantial modification for the production of
27 agricultural products as defined in Title 7, section 152, subsection 2.

28 **Sec. D-2. 30-A MRSA §4404, sub-§14-A** is enacted to read:

29 14-A. Farmland. All farmland within the proposed subdivision has been identified
30 on maps submitted as part of the application. Any mapping of farmland may be done with
31 the help of the local soil and water conservation district;

32 **Sec. D-3. The State Planning Office and the Department of Agriculture,**
33 **Food and Rural Resources develop a model ordinance.** The Executive
34 Department, State Planning Office and the Department of Agriculture, Food and Rural
35 Resources shall review existing municipal ordinances intended to protect farmland and
36 develop a model ordinance for farmland preservation that is made available to municipal
37 and regional planning committees. The Director of the State Planning Office and the
38 Commissioner of Agriculture, Food and Rural Resources shall report on their progress

1 and outcomes to the Joint Standing Committee on Agriculture, Conservation and Forestry
2 by December 1, 2009.

3 SUMMARY

4 This bill is submitted by the Joint Standing Committee on Agriculture, Conservation
5 and Forestry pursuant to Public Law 2007, chapter 649, section 11, subsection 6. This bill
6 implements the recommendations of the Commission To Study the Protection of Farms
7 and Farmland.

8 Part A establishes a process for the voluntary designation of farms as "Farming for
9 Maine" farms. It requires the Commissioner of Agriculture, Food and Rural Resources to
10 report to the Joint Standing Committee on Agriculture, Conservation and Forestry on
11 activity related to and interest in the designation of "Farming for Maine" farms.

12 Part A authorizes the Commissioner of Agriculture, Food and Rural Resources to
13 develop and initiate a pilot program to examine the effectiveness of agricultural districts
14 in maintaining a land base for farming and enhancing the profitability of farms. It also
15 authorizes the commissioner to facilitate the formation of agriculture enhancement
16 groups.

17 Part A requires the Department of Agriculture, Food and Rural Resources and the
18 State Tax Assessor to jointly monitor changes to the federal estate tax on an annual basis
19 and make recommendations to the Legislature regarding Maine's estate tax that will
20 facilitate the preservation of farmland.

21 Part B requires projects and development subject to review and approval under the
22 Maine Revised Statutes, Title 38, chapter 3, article 5-A or article 6 to also be reviewed
23 for impact on farmland when the project or development is funded in whole or in part
24 with federal or state funds. This bill directs the State Board of Education to amend the
25 Department of Education's rule governing the siting of new schools to require
26 consideration of farmland in siting decisions. It establishes a fund within the Department
27 of Agriculture, Food and Rural Resources to receive any mitigation fees assessed and to
28 be used to acquire farmland or interest in farmland.

29 Part C prohibits the use of eminent domain to acquire farmland for recreational
30 purposes or for securing aesthetic or therapeutic benefits for the public.

31 Part D directs the Executive Department, State Planning Office and the Department
32 of Agriculture, Food and Rural Resources to review existing farmland protection
33 ordinances in order to develop a model ordinance to be made available to municipal and
34 regional planning committees.