

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINETEENTH LEGISLATURE

SECOND REGULAR SESSION
January 5, 2000 to May 12, 2000

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
AUGUST 11, 2000

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
2000

management systems, enforcement capabilities and coordination of effort.

2. Develop a potential scenario for how these programs could be structured if they were moved to another department; and

3. By February 1, 2001, submit a report on these findings to the joint standing committees of the Legislature having jurisdiction over natural resources and human services matters.

The joint standing committees of the Legislature having jurisdiction over natural resources and human services matters have the authority to report out legislation to implement their recommendations pursuant to this report.

Sec. 14. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

2000-01

ENVIRONMENTAL PROTECTION, DEPARTMENT OF

Administration – Environmental Protection

All Other	\$75,000
Appropriates funds to hire a consultant to review the Maine Drinking Water and Plumbing Control Programs.	

DEPARTMENT OF ENVIRONMENTAL PROTECTION

TOTAL	\$75,000
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EXECUTIVE DEPARTMENT

State Planning Office

All Other	\$30,000
Appropriates funds for a temporary project position to develop an education strategy aimed at municipalities and the general public.	

EXECUTIVE DEPARTMENT

TOTAL	\$30,000
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TOTAL APPROPRIATIONS	\$105,000
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See title page for effective date.

CHAPTER 762

S.P. 995 - L.D. 2557

An Act to Implement the Recommendations of the Blue Ribbon Commission to Establish a Comprehensive Internet Policy

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

Sec. 1. 5 MRSA §1509-A, as amended by PL 1999, c. 401, Pt. E, §1, is further amended to read:

§1509-A. Payment by credit card

State departments and agencies ~~may~~ shall implement, with the approval of the State Controller and the State Treasurer, procedures for accepting payment for goods, services, fines, forfeitures or any other fees by major credit cards or other electronic means. Unless otherwise provided for in law as of the effective date of this section, any administrative expenses or credit card fees incurred in connection with this method of receiving funds must be absorbed within the existing budget of the department or agency as authorized by the Legislature.

Sec. 2. 10 MRSA Pt. 13 is enacted to read:

PART 13

ELECTRONIC COMMERCE

CHAPTER 1051

UNIFORM ELECTRONIC TRANSACTIONS ACT

§9401. Short title

This chapter may be known and cited as the "Uniform Electronic Transactions Act."

§9402. Definitions

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

1. Agreement. "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations and procedures given the effect of

agreements under laws otherwise applicable to a particular transaction.

2. Automated transaction. "Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course of forming a contract, performing under an existing contract or fulfilling an obligation required by the transaction.

3. Computer program. "Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.

4. Contract. "Contract" means the total legal obligation resulting from the parties' agreement as affected by this chapter and other applicable law.

5. Electronic. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

6. Electronic agent. "Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances, in whole or in part, without review or action by an individual.

7. Electronic record. "Electronic record" means a record created, generated, sent, communicated, received or stored by electronic means.

8. Electronic signature. "Electronic signature" means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

9. Governmental agency. "Governmental agency" means an executive, legislative or judicial agency, department, board, commission, authority, institution or instrumentality of the Federal Government or of a state or of a county, municipality or other political subdivision of a state.

10. Information. "Information" means data, text, images, sounds, codes, computer programs, software, databases or the like.

11. Information processing system. "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying or processing information.

12. Person. "Person" means an individual, corporation, business trust, estate, trust, partnership,

limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity.

13. Record. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

14. Security procedure. "Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. "Security procedure" includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption or callback or other acknowledgment procedures.

15. State. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. "State" includes an Indian tribe or band or Alaskan native village that is recognized by federal law or formally acknowledged by a state.

16. Transaction. "Transaction" means an action or set of actions occurring between 2 or more persons relating to the conduct of business, commercial or governmental affairs.

§9403. Scope

1. General rule. Except as otherwise provided in subsection 2, this chapter applies to electronic records and electronic signatures relating to a transaction.

2. Exceptions. This chapter does not apply to a transaction to the extent it is governed by:

A. A law governing the creation and execution of wills, codicils or testamentary trusts; and

B. The Uniform Commercial Code other than Title 11, sections 1-107 and 1-206 and Articles 2 and 2A.

3. Limitation of exception. This chapter applies to an electronic record or electronic signature otherwise excluded from the application of this chapter under subsection 2 to the extent it is governed by a law other than those specified in subsection 2.

4. Other law. A transaction subject to this chapter is also subject to other applicable substantive law.

§9404. Prospective application

This chapter applies to any electronic record or electronic signature created, generated, sent, communicated, received or stored on or after the effective date of this chapter.

§9405. Use of electronic records and electronic signatures; variation by agreement

1. Electronic means or form not required.

This chapter does not require a record or signature to be created, generated, sent, communicated, received, stored or otherwise processed or used by electronic means or in electronic form.

2. Consent. This chapter applies only to transactions between parties, each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

3. Other transactions. A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.

4. Variance by agreement. Except as otherwise provided in this chapter, the effect of any of the provisions of this chapter may be varied by agreement. The presence in certain provisions of this chapter of the words "unless otherwise agreed," or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

5. Conclusions of law. Whether an electronic record or electronic signature has legal consequences is determined by this chapter and other applicable law.

§9406. Construction and application

This chapter must be construed and applied:

1. Facilitation. To facilitate electronic transactions consistent with other applicable law;

2. Reasonable practices. To be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and

3. General purpose. To effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

§9407. Legal recognition of electronic records, electronic signatures and electronic contracts

1. Form. An electronic record or electronic signature may not be denied legal effect or enforceability solely because it is in electronic form.

2. Formation. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

3. Writing. If a law requires a record to be in writing, an electronic record satisfies the law.

4. Signature. If a law requires a signature, an electronic signature satisfies the law.

§9408. Provision of information in writing; presentation of records

1. Writing. If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

2. Records. If a law other than this chapter requires a record to be posted or displayed in a certain manner; to be sent, communicated or transmitted by a specified method; or to contain information that is formatted in a certain manner, the following rules apply:

A. The record must be posted or displayed in the manner specified in the other law;

B. Except as otherwise provided in subsection 4, paragraph B, the record must be sent, communicated or transmitted by the method specified in the other law; and

C. The record must contain the information formatted in the manner specified in the other law.

3. Unenforceable. If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

4. Variance by agreement. The requirements of this section may not be varied by agreement, but:

A. To the extent a law other than this chapter requires information to be provided, sent or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection 1 that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

B. A requirement under a law other than this chapter to send, communicate or transmit a record by certified mail, return receipt requested;

first-class mail, postage prepaid; or regular United States mail may be varied by agreement to the extent permitted by the other law.

§9409. Attribution and effect of electronic record and electronic signature

1. Attributable to person. An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

2. Effect of attribution to person. The effect of an electronic record or electronic signature attributed to a person under subsection 1 is determined from the context and surrounding circumstances at the time of its creation, execution or adoption, including the parties' agreement, if any, and otherwise as provided by law.

§9410. Effect of change or error

If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply.

1. Security procedure used. If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure but the other party has not and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.

2. Electronic agent. In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of a person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:

A. Promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;

B. Takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

C. Has not used or received any benefit or value from the consideration, if any, received from the other person.

3. Other law. If neither subsection 1 nor subsection 2 is applicable, the change or error has the effect provided by other law, including the law governing mistake, and the parties' contract, if any.

4. Variance by agreement. Subsections 2 and 3 may not be varied by agreement.

§9411. Notarization and acknowledgment

If a law requires a signature or record to be notarized, acknowledged, verified or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

§9412. Retention of electronic records; originals

1. Requirement. If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record that:

A. Accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and

B. Remains accessible for later reference.

2. Transmission information. A requirement to retain a record in accordance with subsection 1 does not apply to any information whose sole purpose is to enable the record to be sent, communicated or received.

3. Agents. A person may satisfy subsection 1 by using the services of another person if the requirements of that subsection are satisfied.

4. Originals. If a law requires a record to be presented or retained in its original form or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with subsection 1.

5. Checks. If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection 1.

6. Evidence; audits. A record retained as an electronic record in accordance with subsection 1 satisfies a law requiring a person to retain a record for evidentiary, audit or like purposes, unless a law enacted after the effective date of this chapter

specifically prohibits the use of an electronic record for the specified purpose.

7. Governmental agencies. This section does not preclude a governmental agency of the State from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

§9413. Admissibility in evidence

In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

§9414. Automated transaction

In an automated transaction, the following rules apply.

1. Interaction of electronic agents. A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.

2. Interaction of electronic agent and individual. A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including an interaction in which the individual performs actions that the individual is free to refuse to perform and that the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.

3. Substantive law. The terms of a contract are determined by the substantive law applicable to it.

§9415. Time and place of sending and receipt

1. Sending. Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

A. Is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;

B. Is in a form capable of being processed by that information processing system; and

C. Enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient that is under the control of the recipient.

2. Receipt. Unless otherwise agreed between a sender and the recipient, an electronic record is received when it:

A. Enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

B. Is in a form capable of being processed by that information processing system.

3. Physical location. Subsection 2 applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under subsection 4.

4. Place of business. Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, the following rules apply.

A. If the sender or recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction.

B. If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

5. Actual receipt. An electronic record is received under subsection 2 even if no individual is aware of its receipt.

6. Contents. Receipt of an electronic acknowledgment from an information processing system described in subsection 2 establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

7. Legal effect. If a person is aware that an electronic record purportedly sent under subsection 1, or purportedly received under subsection 2, was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection may not be varied by agreement.

§9416. Transferable records

1. Definition. In this section, "transferable record" means an electronic record that:

A. Would be a note under Title 11, Article 3-A or a document under Title 11, Article 7 if the electronic record were in writing; and

B. The issuer of the electronic record expressly has agreed is a transferable record.

2. Control. A person has control of a transferable record if an information processing system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

3. Compliance. An information processing system satisfies subsection 2, and a person is deemed to have control of a transferable record, if the transferable record is created, stored and assigned in such a manner that:

A. A single authoritative copy of the transferable record exists that is unique, identifiable and, except as otherwise provided in paragraphs D, E and F, unalterable;

B. The authoritative copy identifies the person asserting control as:

(1) The person to which the transferable record was issued; or

(2) If the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

C. The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

D. Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

E. Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

F. Any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

4. Holders. Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in Title 11, section 1-201, subsection (20), of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code, including, if the applicable statutory requirements under Title 11, section 3-1302, subsection (1); Title 11, section 7-501; or Title 11, section 9-308 are

satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated or a purchaser, respectively. Delivery, possession and indorsement are not required to obtain or exercise any of the rights under this subsection.

5. Obligors. Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under the Uniform Commercial Code.

6. Proof. If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person seeking to enforce the transferable record is in control of the transferable record. Proof includes access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

§9417. Creation and retention of electronic records and conversion of written records by governmental agencies

Each governmental agency of the State shall determine whether, and the extent to which, it will create and retain electronic records and convert written records to electronic records.

§9418. Acceptance and distribution of electronic records by governmental agencies

1. Option. Except as otherwise provided in section 9412, subsection 6, each governmental agency of the State shall determine whether, and the extent to which, it will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use and rely upon electronic records and electronic signatures.

2. Specifics. To the extent that a governmental agency uses electronic records and electronic signatures under subsection 1, the governmental agency, giving due consideration to security, may specify:

A. The manner and format in which the electronic records must be created, generated, sent, communicated, received and stored and the systems established for those purposes;

B. If electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record and the identity of, or criteria

that must be met by, any 3rd party used by a person filing a document to facilitate the process;

C. Control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality and ability to be audited of electronic records; and

D. Any other required attributes for electronic records that are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

3. Not mandatory. Except as otherwise provided in section 9412, subsection 6, this chapter does not require a governmental agency of the State to use or permit the use of electronic records or electronic signatures.

§9419. Interoperability

A governmental agency of the State that adopts standards pursuant to section 9418 may encourage and promote consistency and interoperability with similar requirements adopted by other governmental agencies of this State and other states and the Federal Government and nongovernmental persons interacting with governmental agencies of the State. If appropriate, those standards may specify differing levels of standards from which governmental agencies of the State may choose in implementing the most appropriate standard for a particular application.

CHAPTER 1053

MAINE DIGITAL SIGNATURE ACT

§9501. Short title

This chapter may be known and cited as the "Maine Digital Signature Act."

§9502. Definitions

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

1. Digital signature. "Digital signature" means a computer-created electronic signature that:

A. Is intended by the person using it to have the same force and effect as the use of a manual signature;

B. Is unique to the person using it;

C. Is capable of verification;

D. Is under the sole control of the person using it; and

E. Is linked to data in such a manner that it is invalidated if the data are changed.

2. Electronic signature. "Electronic signature" has the same meaning as used in chapter 1051.

3. State agency. "State agency" means a state department, agency, office, board, commission, quasi-independent agency, authority or institution.

§9503. Rules adopted by Secretary of State

When a digital signature is used in a transaction involving a state agency, it must conform to rules adopted by the Secretary of State. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

§9504. Effect of use of digital signature

A digital signature may be accepted as a substitute for, and, if accepted, has the same force and effect as the use of, a manual signature.

§9505. Effect of electronic filing with digital signature

A state agency may allow the electronic filing of information required by that agency. Information filed electronically with a state agency utilizing a digital signature has the same force and effect as if filed as a paper document with a manual signature.

§9506. Use of digital signature

The use or acceptance of a digital signature is at the option of the parties. Nothing in this chapter requires a state agency to use or permit the use of a digital signature.

§9507. Construction

Except as otherwise specifically provided, nothing in this chapter may be construed to preempt, replace or otherwise negate the requirements of chapter 1051.

Sec. 3. Resolve 1999, c. 89, §7 is amended to read:

Sec. 7. Report. Resolved: That no later than December 1, 1999, the commission shall submit its initial report, together with any necessary implementing legislation, to the Joint Standing Committee on Business and Economic Development of the 119th Legislature and the Executive Director of the Legislative Council. The Joint Standing Committee on Business and Economic Development is authorized to report out a bill during the Second Regular Session of the 119th Legislature concerning the findings and recommendations of the commission.

The commission is authorized to meet following the conclusion of the Second Regular Session of the 119th Legislature to continue its work. The commission shall end its work by November 15, 2000. The commission shall submit its 2nd report, together with any necessary implementing legislation, to the First Regular Session of the 120th Legislature.

If the commission requires an extension, it may apply to the Legislative Council, which may grant the extension; and be it further

Sec. 4. Report on use of credit cards. The Department of Administrative and Financial Services, Bureau of Revenue Services and the Department of Professional and Financial Regulation shall each submit a report detailing the impact of the acceptance of payments by credit cards on each agency's budget. Each report must include the total number of agency transactions that included the use of credit cards, the dollar amount attributable to credit card transactions and the cost savings or loss to the agency. The report must be submitted to the joint standing committee of the Legislature having jurisdiction over business and economic development matters and the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs by January 20, 2001.

Sec. 5. Effective date. Section 1 of this Act takes effect on July 1, 2001.

Sec. 6. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

2000-01

LEGISLATURE

Blue Ribbon Commission to Establish a Comprehensive Internet Policy

Personal Services	\$1,375
All Other	1,750
TOTAL	\$3,125

Provides funds for the per diem and expenses of legislative members of the Blue Ribbon Commission to Establish a Comprehensive Internet Policy and to print the required report.

See title page for effective date, unless otherwise indicated.

CHAPTER 763

S.P. 736 - L.D. 2086

An Act to Preserve the State's Farm Economy and Heritage

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

Sec. 1. 7 MRSA c. 10-B is enacted to read:

CHAPTER 10-B

MAINE FARMS FOR THE FUTURE PROGRAM

§317. Maine Farms for the Future Program

The Maine Farms for the Future Program, referred to in this chapter as the "program," is created. The program is administered by the department, either directly or by contract with a suitable organization. The program provides a selected farm with assistance in developing a detailed business plan that involves changes in the farm's operation to increase the vitality of the farm and investment money to help implement the plan. The department shall organize a review panel, referred to in this chapter as the "panel," to evaluate and approve applications for participation in the program and for investment support.

§318. Business plan development

1. Eligibility. An applicant must own at least 5 acres of land in agricultural use and must submit an application to the department to be eligible for participation in the program pursuant to procedures developed by the department.

2. Criteria for selection. The panel shall evaluate and approve applications that are based upon criteria developed by the department, including:

A. The degree of opportunity for increasing the vitality of the farm due to factors such as the capability of the applicant to effect positive changes in farm operations and the suitability of the land in agricultural use to sustain those changes; and

B. The degree of threat to the continuation of agricultural use of the land due to factors such as the financial capacity and current farm management practices of the applicant and development pressures in the area where the farm is located.

3. Services package; reimbursement. Once an applicant is selected to participate in the program, the department shall assist the selected farm in assembling a services package to develop the business