

## CHAPTER 6

### MAINE AGRICULTURE PROTECTION ACT

#### §151. Short title

This Act may be known and cited as "the Maine Agriculture Protection Act." [PL 2007, c. 649, §3 (NEW).]

#### SECTION HISTORY

PL 2007, c. 649, §3 (NEW).

#### §152. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 2007, c. 649, §3 (NEW).]

**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. [PL 2007, c. 649, §3 (NEW).]

**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, manure and compost 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. "Agricultural products" does not include trees grown and harvested for forest products. [PL 2015, c. 145, §1 (AMD).]

**3. Agricultural support services.** "Agricultural support services" means the aerial or surface application of seed, fertilizer, pesticides or soil amendments and custom harvesting. [PL 2007, c. 649, §3 (NEW).]

**4. Composting.** "Composting" means the controlled aerobic decomposition of organic materials to produce a soil-like product beneficial to plant growth and suitable for agronomic use. [PL 2007, c. 649, §3 (NEW).]

**5. Farm.** "Farm" means the land, plants, animals, buildings, structures, ponds and machinery used in the commercial production of agricultural products. [PL 2007, c. 649, §3 (NEW).]

**6. Farm operation.** "Farm operation" means a condition or activity that occurs on a farm in connection with the commercial production of agricultural products and includes, but is not limited to, operations giving rise to noise, odors, dust, insects and fumes; operation of machinery and irrigation pumps; disposal of manure; agricultural support services; and the employment and use of labor. [PL 2007, c. 649, §3 (NEW).]

#### SECTION HISTORY

PL 2007, c. 649, §3 (NEW). PL 2015, c. 145, §1 (AMD).

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

A farm, farm operation or agricultural composting operation may not be considered a public or private nuisance under Title 17, chapter 91 if the farm, farm operation or agricultural composting operation alleged to be a nuisance is in compliance with applicable state and federal laws, rules and regulations and: [PL 2007, c. 649, §3 (NEW).]

**1. Farm; farm operation; agricultural composting operation.** The farm, farm operation or agricultural composting operation conforms to best management practices, as determined by the commissioner in accordance with Title 5, chapter 375; [PL 2007, c. 649, §3 (NEW).]

**2. Storage or use of farm nutrients; complaints.** For complaints regarding the storage or use of farm nutrients as defined in section 4201, subsection 4, the farm, farm operation or agricultural composting operation has implemented a nutrient management plan developed in accordance with section 4204 and operation of the farm, farm operation or agricultural composting operation is consistent with the nutrient management plan; or [PL 2007, c. 649, §3 (NEW).]

**3. Change in land use; occupancy of land.** The farm, farm operation or agricultural composting operation existed before a change in the land use or occupancy of land within one mile of the boundaries of the farm, farm operation or agricultural composting operation as long as, before the change in land use or occupancy, the farm, farm operation or agricultural composting operation would not have been considered a nuisance. This subsection does not apply to a farm, farm operation or agricultural composting operation that materially changes the conditions or nature of the farm, farm operation or agricultural composting operation after a change in the land use or occupancy of land within one mile of the boundaries of the farm, farm operation or agricultural composting operation. Nothing in this subsection affects the applicability of any of the other provisions of this chapter. [PL 2007, c. 649, §3 (NEW).]

#### SECTION HISTORY

PL 2007, c. 649, §3 (NEW).

#### §154. Violation of municipal ordinances

A farm operation or agricultural composting operation located in an area where agricultural activities are permitted may not be considered a violation of a municipal ordinance if the farm operation or agricultural composting operation conforms to best management practices as determined by the commissioner in accordance with section 153, subsection 1. [PL 2015, c. 145, §2 (AMD).]

#### SECTION HISTORY

PL 2007, c. 649, §3 (NEW). PL 2015, c. 145, §2 (AMD).

#### §155. Application; municipal ordinances

This chapter does not affect the application of state and federal laws. A municipality must provide the commissioner with a copy of any proposed ordinance that affects farm operations or agricultural composting operations. The clerk of the municipality or a municipal official designated by the clerk shall submit a copy of the proposed ordinance to the commissioner at least 90 days prior to the meeting of the legislative body or public hearing at which adoption of the ordinance will be considered. The commissioner shall review the proposed ordinance and advise the municipality as to whether the proposed ordinance restricts or prohibits the use of best management practices. This section does not affect municipal authority to enact ordinances. [PL 2015, c. 145, §3 (AMD).]

#### SECTION HISTORY

PL 2007, c. 649, §3 (NEW). PL 2015, c. 145, §3 (AMD).

#### §156. Complaint resolution

The commissioner shall investigate all complaints involving a farm, farm operation or agricultural composting operation, including, but not limited to, complaints involving the use of waste products, groundwater and surface water pollution and insect infestations. In cases of insect infestations not arising from agricultural activities, when the State Entomologist believes that the infestation is a public nuisance and is able to identify the source or sources of the infestation, the commissioner shall refer the matter to the Department of the Attorney General. If the commissioner finds upon investigation that the person responsible for the farm, farm operation or agricultural composting operation is using best management practices, the commissioner shall notify that person and the complainant of this finding in writing. Notwithstanding section 153, subsection 3, if the commissioner identifies the source or sources of the problem and finds that the problem is caused by the use of other than best management practices, the commissioner shall: [PL 2007, c. 649, §3 (NEW).]

**1. Changes.** Determine the changes needed in the farm, farm operation or agricultural composting operation to comply with best management practices and prescribe site-specific best management practices for that farm, farm operation or agricultural composting operation; [PL 2007, c. 649, §3 (NEW).]

**2. Advise person responsible.** Advise the person responsible for the farm, farm operation or agricultural composting operation of the changes, as determined in subsection 1, that are necessary to conform with best management practices and determine subsequently if those changes are implemented; and [PL 2007, c. 649, §3 (NEW).]

**3. Findings.** Give the findings of the initial investigation and subsequent investigations and any determination of compliance to the complainant and person responsible. [PL 2007, c. 649, §3 (NEW).]

#### SECTION HISTORY

PL 2007, c. 649, §3 (NEW).

#### §157. Good faith

The Maine Rules of Civil Procedure, Rule 11 applies in any private action filed against the owner or operator of a farm, farm operation or agricultural composting operation in which it is alleged that the farm, farm operation or agricultural composting operation constitutes a nuisance if it is determined that the action was not brought in good faith and was frivolous or intended for harassment only. [PL 2007, c. 649, §3 (NEW).]

#### SECTION HISTORY

PL 2007, c. 649, §3 (NEW).

#### §158. Failure to adopt best management practices

If the person responsible for a farm, farm operation or agricultural composting operation does not apply best management practices as required by the commissioner, the commissioner shall send a written report to an appropriate agency if a federal or state law has been violated and to the Attorney General. The Attorney General may institute an action to abate a nuisance or to enforce the provisions of this chapter or any other applicable state law, and the court may order the abatement with costs as provided under Title 17, section 2702, such injunctive relief as provided in this section or by other applicable law, or that a civil violation has been committed. Failure to apply best management practices in accordance with this chapter constitutes a separate civil violation for which a fine of up to \$1,000, together with an additional fine of up to \$250 per day for every day that the violation continues, may be adjudged. [PL 2007, c. 649, §3 (NEW).]

#### SECTION HISTORY

PL 2007, c. 649, §3 (NEW).

**§159. Agricultural Complaint Response Fund**

There is established the nonlapsing Agricultural Complaint Response Fund. The commissioner may accept from any source funds designated to be placed in the fund. The commissioner may authorize expenses from the fund as necessary to investigate complaints involving a farm, farm operation or agricultural composting operation and to abate conditions potentially resulting from farms, farm operations or agricultural composting operations. [PL 2007, c. 649, §3 (NEW).]

**SECTION HISTORY**

PL 2007, c. 649, §3 (NEW).

**§160. Educational outreach**

The commissioner shall conduct an educational outreach program for the agricultural community to increase awareness of the provisions of this chapter and the best management practices of the department. The commissioner shall inform the public about the provisions of this chapter, the complaint resolution process adopted by the department and state policy with respect to preservation and protection of agricultural and natural resources. [PL 2007, c. 649, §3 (NEW).]

**SECTION HISTORY**

PL 2007, c. 649, §3 (NEW).

**§161. Rules**

The commissioner shall adopt rules in accordance with the Maine Administrative Procedure Act to interpret and implement this chapter. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2007, c. 649, §3 (NEW).]

**SECTION HISTORY**

PL 2007, c. 649, §3 (NEW).

**§162. Maine Farm Agricultural Resource Management and Sustainability recognition program**

The commissioner shall establish a process for designating Maine Farm Agricultural Resource Management and Sustainability recipients according to this section. This designation provides farmers an opportunity to recognize their commitment to sustainable agricultural practices and long-term resource management and to increase public awareness of agricultural producer commitment to best management practices. [PL 2017, c. 160, §1 (AMD).]

**1. Application.** An applicant for designation as a Maine Farm Agricultural Resource Management and Sustainability recipient shall submit a completed application for verification in accordance with subsection 3 to the department. The department shall develop an application and make it available through the offices of the soil and water conservation districts and private organizations and public agencies that support or represent farmers in the State. [PL 2017, c. 160, §1 (AMD).]

**2. Eligibility.** A farm is eligible for designation under this section if it engages in the management of cropland or the production of livestock, specialty crops or value-added products and meets the criteria established by the commissioner as follows:

A. The farm consists of land classified as prime farmland, land of statewide or local importance or unique farmland by the Natural Resources Conservation Service within the United States Department of Agriculture. In counties where land of local importance has not been identified, land that is actively farmed may be eligible as provided in rules adopted under subsection 4; [PL 2009, c. 356, Pt. A, §1 (NEW).]

B. The farm is engaged in the commercial production of agricultural products; or [PL 2017, c. 160, §1 (AMD).]

C. The farm complies with additional criteria established in rules adopted under subsection 4. [PL 2017, c. 160, §1 (AMD).]

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

[PL 2017, c. 160, §1 (AMD).]

**3. Verification of eligibility.** An applicant for designation as a Maine Farm Agricultural Resource Management and Sustainability recipient shall submit a completed application form together with support materials as required in rules adopted under subsection 4 to the department for verification of eligibility.

[PL 2017, c. 160, §1 (AMD).]

**4. Rules.** The commissioner may adopt rules to further define the verification process under subsection 3 and establish additional eligibility criteria as needed for designation of Maine Farm Agricultural Resource Management and Sustainability recipients. The commissioner may provide signs or certificates or develop other means of recognizing a farm that has attained designation as a Maine Farm Agricultural Resource Management and Sustainability recipient. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2017, c. 160, §1 (AMD).]

**5. Fee.** The commissioner may charge fees as necessary for the administration of this section.

[PL 2017, c. 160, §1 (AMD).]

#### SECTION HISTORY

PL 2009, c. 356, Pt. A, §1 (NEW). PL 2011, c. 682, §38 (REV). PL 2017, c. 160, §1 (AMD).

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

The commissioner may establish a pilot program to examine the effectiveness of agricultural districts in keeping farmland in agricultural production and enhancing the profitability of farming. For the purposes of this section, "pilot program" means an agricultural districts program that allows farmers to propose that the department designate their farmland as an agricultural district where commercial agriculture is encouraged and farmland protected through collaborative efforts at the state and local level. [PL 2009, c. 356, Pt. A, §2 (NEW).]

**1. Eligibility criteria for agricultural districts.** In order to be eligible to participate in the pilot program, farms must form agricultural districts. An agricultural district must be composed of 3 or more farms that are located in geographic proximity to each other, produce similar types of agricultural products or share common marketing interests. The commissioner shall review eligibility criteria for participants in agricultural districts in other states and may develop additional criteria for participation with the pilot program, including, but not limited to, minimum acreage and farm income thresholds.

[PL 2009, c. 356, Pt. A, §2 (NEW).]

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

[PL 2009, c. 356, Pt. A, §2 (NEW).]

**3. Selection of regions.** The commissioner shall distribute a description of the purpose and potential benefits of forming an agricultural district. Distribution may be through public agencies and private organizations that have regular contact with farmers in the State. The description must be posted

on the department's publicly accessible website. The description notice must include information on how to contact the department to express interest in learning more about or participating in an agricultural district.

Based on the response to the initial solicitation, the commissioner may designate one or more districts. Prior to making a selection, the commissioner shall communicate with local or regional planning commissions and state, local or regional land trusts to ascertain their willingness to participate in efforts to protect farmland in the proposed districts.

If more than one district is designated for the pilot program, the commissioner shall strive to select districts in different parts of the State or different sectors of the State's agricultural economy.

[PL 2009, c. 356, Pt. A, §2 (NEW).]

## SECTION HISTORY

PL 2009, c. 356, Pt. A, §2 (NEW).

### §164. Maine Working Farmland Access and Protection Program

**1. Program established; administration.** The Maine Working Farmland Access and Protection Program, referred to in this section as "the program," is established to provide protection to strategically significant working farmland properties as defined in Title 5, section 6201, subsection 4-A whose continued availability to commercial agricultural businesses is essential to the long-term future of the economic sector. The department shall administer the program either directly or by contract with a suitable organization.

[PL 2021, c. 135, §5 (NEW).]

**2. Review panel.** The department shall establish a review panel to advise the commissioner in the operation of the program, including, but not limited to, evaluating applications and recommending to the department applicants for participation in the program.

[PL 2021, c. 135, §5 (NEW).]

**3. Selection criteria.** The selection criteria with which to evaluate applications for protection of working farmland property under the program must include, but are not limited to:

A. The interest of the owner of the working farmland property to make the farmland available via lease or transfer the protected property to another farmer or other farmers to advance the department's goal of preserving and increasing access to farmland for new and growing farms; [PL 2021, c. 135, §5 (NEW).]

B. The threat of conversion of the working farmland property such that it would become unavailable for commercial production of agricultural products; [PL 2021, c. 135, §5 (NEW).]

C. The percentage of soils classified by the United States Department of Agriculture as prime farmland, unique farmland, farmland of statewide importance and farmland of local importance; [PL 2021, c. 135, §5 (NEW).]

D. The agricultural structures and improvements associated with the working farmland property; [PL 2021, c. 135, §5 (NEW).]

E. The economic viability of the working farmland property in terms of current and potential future commercial agricultural activities in local, regional and statewide markets; connection of the working farmland property to agricultural services including processors, aggregators and distributors; and number of on-farm jobs supported by the working farmland property; [PL 2021, c. 135, §5 (NEW).]

F. The proximity of other working farmland properties in the town or region; [PL 2021, c. 135, §5 (NEW).]

G. The degree of community support for the proposed protection of the working farmland property; [PL 2021, c. 135, §5 (NEW).]

H. The multiple natural resources values associated with the working farmland property, including open space land, forested land and wetlands; riparian buffers; wildlife habitat; and freshwater aquifers; and [PL 2021, c. 135, §5 (NEW).]

I. Whether the applicant is from or serving an underserved or underprivileged community as defined by the department by rule. Rules adopted under this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [PL 2021, c. 135, §5 (NEW).]  
[PL 2021, c. 135, §5 (NEW).]

**4. Grant agreements.** The commissioner shall enter into grant agreements with state agencies and cooperating entities for the purpose of receiving grants from the Maine Working Farmland Access and Protection Fund under Title 5, section 6203-C.  
[PL 2021, c. 135, §5 (NEW).]

#### SECTION HISTORY

PL 2021, c. 135, §5 (NEW).

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