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An Act To Create the Maine Agriculture Protection Act

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

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

3. Commercial farming. "Commercial farming" means the production of any "farmagricultural product," as defined by Title 177, section ~~2805~~152, subsection 2, with the intent that that farmagricultural product be sold or otherwise disposed of to generate income.

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

CHAPTER 6

Maine agriculture protection act

§ 151. Short title

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

§ 152. Definitions

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

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

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

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

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

5. 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.

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

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

8. 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.

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

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

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

§ 153. Agriculture protection area

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

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

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

- A. A legal description of the cropland, including the municipal tax map and lot number or numbers;
- B. Maps that provide the soil types, zoning and flood plan of the cropland; and
- C. Proof of annual gross income from the production of agricultural products of at least \$10,000 for the previous 3 years.

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

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

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

- A. The valuation must be the same as that determined in Title 36, sections 1101 to 1121.
- B. The valuation may be reviewed biannually and must remain in effect as long as the cropland remains in production.
- C. The owner of the property shall annually on or before April 1st provide documentation that the cropland remains in an agriculture protection area.

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

§ 154. 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 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:

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

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

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 paragraph 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 paragraph affects the applicability of any of the other provisions of this section.

§ 155. Violation of municipal ordinances

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

§ 156. Application; municipal ordinances

This section does not affect the application of state and federal laws. After the effective date of this section, a municipality must provide the commissioner with a copy of any proposed ordinance that affects farm 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 generally accepted agricultural practices. This section does not affect municipal authority to enact ordinances.

§ 157. Minimization of impact of governmental action

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

- 1. Diminution in value.** Avoid diminution in value of agricultural property;
- 2. Expedite decision.** Expedite a decision by the entity in cases in which a delay of the decision will substantially interfere with the use or value of agricultural property rights; and
- 3. Avoid delays in compensating owners.** Avoid unnecessary delays in compensating owners of agricultural property when diminution in value occurs by governmental action.

§ 158. Impact assessment

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

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

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

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

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

§ 159. 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 generally accepted agricultural practices, the commissioner shall notify that person and the complainant of this finding in writing. Notwithstanding section 154, if the commissioner identifies the source or sources of the problem and finds that the problem is caused by the use of other than generally accepted agricultural practices, the commissioner shall:

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

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 generally accepted agricultural practices and determine subsequently if those changes are implemented; and

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

§ 160. 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.

§ 161. Failure to adopt generally accepted agricultural practices

If the person responsible for a farm, farm operation or agricultural composting operation does not apply generally accepted agricultural 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 section 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 generally accepted agricultural practices in accordance with this section 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.

§ 162. 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.

§ 163. 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 generally accepted agricultural 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.

§ 164. Rules

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

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

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

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

2-A. Temporary membership. When the subject matter of an appeal or complaint resolution process under this section is other than manure or nutrient management, the commissioner may appoint up to 3 temporary board members for the purpose of hearing an appeal, conducting an information-gathering meeting or facilitating the complaint resolution process under ~~Title 17, section 2805157~~. At least one temporary member must have expertise with the subject matter of the complaint or problem and one temporary member must represent the agricultural sector involved. The terms for temporary members expire when the board determines that it has taken final action on the appeal or complaint resolution process.

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

2. Crop-producing. Includes only land where agricultural chemicals, as defined in Title 7, section 52, were used in the production of farmagricultural products, as defined in Title ~~177~~, section ~~2805152, subsection 2~~, in 3 or more of the previous 6 calendar years; and

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

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

A. "Commercial agricultural production" means commercial production of crops for human and animal consumption, including the commercial production of sod, an agricultural composting operation as defined in Title ~~177~~, section ~~2805152, subsection 1~~, the commercial production of seed to be used primarily to raise crops for nourishment of humans or animals and the production of livestock.

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

B. Owners and operators of commercial agricultural operations ~~shall beare~~ exempt from the fee requirements under this section for registering agricultural facilities and for hazardous materials used in the commercial production of farmagricultural products as defined in Title ~~177~~, section ~~2805152, subsection 1, paragraph C2~~. FarmAgricultural product processing facilities are not exempt from the fee requirements. For the purposes of this section, "processing" ~~shall~~does not include the packaging of raw commodities or farmagricultural products for resale.

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

A. The farm must have an irrigation management plan, referred to in this section as the "irrigation plan." The irrigation plan must identify the total number of irrigated acres on the farm or on a specified management unit, the amount of water needed, the potential sources of water for irrigating the field and the water management practices that will be used to ensure that the amount of water used for crop irrigation will be kept to a minimum. For the purposes of this subsection, "farm" has the same meaning as in Title ~~177~~, section ~~2805152, subsection 7~~.

SUMMARY

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