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An Act To Create the Maine Agriculture Protection Act

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, maintaining a base of commercially viable agricultural land is vital to rural communities and the State's economy; and

Whereas, thoughtful policies are needed to address the impact of development on working farms and farmland; and

Whereas, convening a commission for this purpose as soon as possible will allow more time for thoughtful examination of the issues; and

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

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 "farm product," as defined by Title 17, section 2805, with the intent that that farm product be sold or otherwise disposed of to generate income.

Sec. 2. 7 MRSA §52, sub-§3-A is enacted to read:

3-A. Farm product. "Farm product" means those plants and animals useful to humans and includes, but is not limited to, forages and sod crops, grains and food crops, dairy products, poultry and poultry products, bees, livestock and livestock products and fruits, berries, vegetables, flowers, seeds, grasses and other similar products.

Sec. 3. 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. "Agricultural products" does not include trees grown and harvested for forest products.

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

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.

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

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.

§ 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:

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;

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 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.

§ 154. 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 best management practices as determined by the commissioner in accordance with section 153, subsection 1.

§ 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. 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.

§ 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:

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;

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

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

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

Sec. 4. 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 practices prescribed for a farm or other issue governed under section 156 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 156 or Title 17, section 2701-B ~~or 2805~~.

Sec. 5. 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 ~~2805~~156. 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. 6. 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 farm products, as defined in ~~Title 17~~, section ~~2805~~52, subsection 3-A, in 3 or more of the previous 6 calendar years; and

Sec. 7. 17 MRSA §2805, as amended by PL 2005, c. 638, §1, is repealed.

Sec. 8. 36 MRSA §2013, sub-§1, ¶A, as repealed and replaced by PL 2007, c. 466, Pt. A, §60, is 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 17~~, section ~~2805~~152, 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, including the removal and storage of manure from that livestock.

Sec. 9. 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 be~~ exempt from the fee requirements under this section for registering agricultural facilities and for hazardous materials used in the commercial production of ~~farm~~agricultural products as defined in ~~Title 17~~, section ~~2805~~152, subsection 1, ~~paragraph C~~2. 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 ~~farm~~agricultural products for resale.

Sec. 10. 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 17~~, section ~~2805~~152, subsection 5.

Sec. 11. Commission to Study the Protection of Farms and Farmland established.

The Commission to Study the Protection of Farms and Farmland, referred to in this section as "the commission," is established.

1. Membership. The commission consists of 11 members, appointed as follows:

A. Two members of the Senate, one member from the party holding the largest number of seats and one member from the party holding the 2nd largest number of seats, appointed by the President of the Senate. At least one Senate member must be serving on the Joint Standing Committee on Agriculture, Conservation and Forestry;

B. Four members of the House of Representatives, at least one member from the party holding the largest number of seats and at least one member from the party holding the 2nd largest number of seats, all appointed by the Speaker of the House. At least one House member must be serving on the Joint Standing Committee on Agriculture, Conservation and Forestry;

C. One member with expertise in land use policy and knowledge of farmland preservation programs appointed by the President of the Senate;

D. One member with expertise in tax policy appointed by the President of the Senate;

E. Two members recommended by a council representing diverse agricultural producer associations and appointed by the Speaker of the House; and

F. One member representing municipal interests appointed by the Speaker of the House.

2. Commission chairs. The first-named Senator is the Senate chair of the commission and the first-named member of the House is the House chair of the commission.

3. Appointments; convening of commission. All appointments must be made no later than 30 days following the effective date of this Act. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been made. When the appointment of all members has been completed, the chairs of the commission shall call and convene the first meeting of the commission.

4. Duties. The commission shall develop policy initiatives to protect working farms from the impact of development and to maintain a base of commercially viable agricultural land for Maine's future. Towards this end, the commission shall:

A. Develop a system to classify farmland that is viable for agricultural production and establish statewide criteria for identifying farmland that warrants the highest order of protection;

B. Explore options and develop a proposal for designating agriculture protection areas. In exploring options, the commission shall review provisions establishing agricultural protection zones or districts in other states;

C. Review eligibility criteria and participation by farmers in Maine's current use property tax programs and develop recommendations regarding tax policy; and

D. Consider requiring an assessment of potential impacts on agricultural land prior to a governmental action such as a permitting decision or commencement of a public works project.

5. Staff assistance. The Legislative Council shall provide necessary staffing services to the commission.

6. Report. No later than November 5, 2008, the commission shall submit a report that includes its findings and recommendations, including suggested legislation, to the joint standing committee of the Legislature having jurisdiction over agricultural matters. Upon receipt of the report, the joint standing committee of the Legislature having jurisdiction over agricultural matters may introduce legislation related to the protection of farmland to the First Regular Session of the 124th Legislature.

7. Commission budget. The commission shall seek outside funds to fully fund all costs of the commission. If sufficient outside funding has not been received by the commission by August 1, 2008 to fully fund all costs of the commission, no meetings are authorized and no expenses of any kind may be incurred or reimbursed. Contributions to support the work of the commission may not be accepted from any party having a pecuniary or other vested interest in the outcome of the matters being studied. Any person, other than a state agency, desiring to make a financial or in-kind contribution must certify to the Legislative Council that it has no pecuniary or other vested interest in the outcome of the study. The certification must be made in the manner prescribed by the Legislative Council. All contributions are subject to approval by the Legislative Council. All funds accepted must be forwarded to the Executive Director of the Legislative Council along with an accounting record that includes the amount of the funds, the date the funds were received, from whom the funds were received and the purpose of and any limitation on the use of the funds. The Executive Director of the Legislative Council shall administer any funds received by the commission. The executive director shall notify the chairs of the commission when sufficient funding has been received.

Sec. 12. Appropriations and allocations. The following appropriations and allocations are made.

LEGISLATURE

Study Commissions - Funding 0444

Initiative: Provides funds for the per diem and general operating expenses of the Commission to Study the Protection of Farms and Farmland.

OTHER SPECIAL REVENUE FUNDS	2007-08	2008-09
Personal Services	\$0	\$1,320
All Other	\$0	\$2,950
OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$4,270

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective July 18, 2008