

# OPLA RESEARCH REQUEST MEMO

To: Karen Nadeau, Legislative Analyst  
From: Darlene Shores Lynch, Senior Legislative Researcher  
Date: April 26, 2021  
RE: Legislative history of Title 7, chapter 6

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Hi Karen,

Below is a summary of the legislative history of Title 7 M.R.S.A., chapter 6, “The Maine Agriculture Protection Act,” with links to the original bill, amended bill, enacted law and the ACF committee’s LD file. In addition, I have included the recommendations of the Commission to Study the Protection of Farms and Farmland, with a link to the study commission’s final report.

## I. Legislative History of the Maine Agriculture Protection Act

LD 1684, “An Act to Create the Maine Agriculture Protection Act,” was submitted to the First Regular Session of the 123rd Legislature and referred to the Joint Standing Committee on Agriculture, Conservation and Forestry (ACF). The [original bill](#) proposed to repeal 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 also addresses the use of best management practices. The bill proposed to establish the Agriculture Protection Act in Title 7 and establish incentives to conserve and protect current agricultural land and enterprises and to further encourage agricultural development. The bill also proposed to allow the State to create agriculture protection areas to foster and strengthen agriculture development.

According to testimony found in the [ACF Committee’s master file](#) for LD 1684, proponents of the bill included: the sponsor, Senator Sherman; the Maine Potato Board; the Maine Dairy Industry Association; and the Maine Wild Blueberry Commission. The proponents made the following points about the bill:

- LD 1684 is not completely new legislation. LD 1684 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 establishes the Agriculture Protection Act in Title 7. This change allows for some clarification of definitions from Title 17 to Title 7. The biggest change with this move is that issues dealing with agricultural activities would no longer be considered nuisances. This change also makes it clear that issues dealing with agriculture should be overseen by the Maine Department of Agriculture. (Maine Potato Board)
- The bill proposes to create agriculture protection areas as areas in this state that are important to agriculture as prime agricultural land needing protection from nonagricultural development pressures. (Maine Potato Board)
- LD 1684 does not give farmers any additional leeway; they must operate following generally accepted agricultural practices and they cannot undertake activities that are harmful to the public safety or health. LD 1684 does not take away government power as it relates to eminent domain. (Maine Potato Board)
- The biggest change the bill is making is one of language. In certain sections of current law, agricultural practices are referred to as a "nuisance". These practices are fundamental to the operation of a farm. The bill updates the language used to reference modern agriculture and reflects the complex business and extensive economic force it represents in our state. (Maine Dairy Industry Association)
- This bill would lend formal support to farmers and credible farming practices. It supports credible farming practices by making a statement that farming practices done correctly should not be viewed as a nuisance, but a reality of living in a farming community. (Maine Wild Blueberry Commission)

- The bill encourages and provides incentives-for farmers to establish agricultural protection areas thereby helping to maintain a critical mass of agricultural activity in Maine and supporting necessary infrastructure. (Maine Wild Blueberry Commission)

Suggested modifications to the bill from the Maine Wild Blueberry Commission were:

- Other definitions of “agricultural products” used in Maine law should be reviewed in context with the breadth of this definition, such as the definition used for the Agricultural Management Loan Fund (AMLF). Also, wood products and fiber should be included within the definition of “Agricultural Products” as most farms have wood lots.
- In Section 153, subsection 4, Public Nuisance, the section should apply to all farms in Maine, not just farms in agricultural protection districts. This provision may be most valuable to small farms that are on the urban/suburban interface that may not qualify for the creation of an agricultural protection area.
- In Section 153, subsection 5, Valuation, if the intent of this section is that municipalities would use the cropland assessment, the section should explicitly say so.
- Section 153, subsection 5. par C. states, "The owner of the property shall annually on or before April 1st provide documentation that the cropland remains in an agricultural protection area." Our concern is the paper work burden placed on the municipalities and farmers/landowners. We suggest that this provision be structured to be performance based. Once enrolled the land stays enrolled until taken out by the landowner. However, there should be a penalty of back taxes at the non-cropland assessment plus interest for every year non- qualifying land left in the program. This puts the administrative responsibility on the landowner with penalties to protect the interest of the municipalities.

Opponents to the bill were MOFGA and MMA. The opponents made the following points:

- We support the creation of agricultural protection areas, but suggests that there be a variety of ways to create these districts based on farmer involvement, municipal support, and political support within the farming communities. (MOFGA)
- As proposed, the Department is solely responsible for designing the standards to be met by participating farm operations and to enforce those program standards. Nowhere in the bill is the general public provided an opportunity to participate in the creation of the standards. (MOFGA)
- A one-year tax penalty is insufficient to ensure that participants are committed to the underlying goal. Under the farmland and open space law, the penalty associated with withdrawing from the program is the payment of the taxes that would have been assessed if the property had been assessed at fair market value rather than current use, less the actual taxes paid over the last five years. The tax scheme proposed by LD 1684 appears to be unconstitutional. (MMA)
- LD 1684 requires a governmental entity, including municipalities, to prepare a written impact assessment describing how a proposed governmental action will impact a farm enrolled in the proposed program. In addition, if the impact statement illustrates that a government action will reduce the value of the farmland property, the community will be required to reimburse for that loss. This process clearly shifts additional costs and burdens onto municipalities and the bill will need to be amended to include a mandate preamble. (MMA)
- We are concerned with the lack of a funding mechanism to address complaints against a qualifying farm operation. Although LD 1684 creates a complaint process, there is no state-identified resource dedicated to the Agriculture Compliant Response Fund. Instead, the Commissioner is authorized to accept funds from whatever revenue source may be available. (MMA)

The Maine Department of Agriculture, Food and Rural Resources testified NFNA the bill. The department noted that the legislation affects a variety of areas in state law, in addition to Title 7 and suggested the bill be held over to allow interested parties to work collaboratively to ensure that what emerges is sound public policy that has support of all the players.

LD 1684 was a major piece of legislation, which the ACF committee, the bill's sponsor, and the Commissioner of Agriculture, Food, and Rural Resources agreed needed more time for consideration than the session workload allowed. The bill was carried over to the Second Regular Session of the 123rd Legislature.

During the Second Regular Session, the bill was amended by "[Committee A](#)" to remove the provisions for designating agriculture protection areas and requiring a governmental entity to prepare an impact assessment prior to taking an action that would diminish the value of agricultural property. It replaced the term "generally accepted agricultural practices" with "best management.". The amendment also established a study commission to develop recommendations for protecting farmland. The amended version of the bill was enacted by the House and Senate and signed by the Governor as [PL 2007, c. 649](#). The legislation was enacted as an emergency measure effective April 18, 2008.

## **II. Commission to Study the Protection of Farms and Farmland**

The study commission established in PL 2007, c. 649 convened in September of 2008 and issued its [final report](#) in November of 2008. The study commission recommended the following:

1. Creating a voluntary farmland registry. Farmers would publicly identify parcels of land that they intend to keep in agricultural use or maintain in a manner to be readily returned to agricultural use.
2. Authorizing the Department of Agriculture, Food and Rural Resources (DAFRR) to develop a pilot program for the creation of agricultural districts.
3. Amending the Farm and Open Space Tax Law to: tighten eligibility to avoid inclusion of land that is not truly active farmland; review the treatment of woodland that is included in a parcel of farmland to reflect the intent of the law; and provide state reimbursement to municipalities for tax losses attributable to farmland that becomes eligible for current use taxation.
4. Adopting a state income tax credit for donations of agriculture conservation easements.
5. Adopting a state income tax credit for beginning farmers based on a credit used successfully in Nebraska.
6. Monitoring changes to the federal estate tax and continuing to explore whether there are changes to the estate tax that could facilitate the continuation of land in active farming on the death of the owner.
7. Devoting more resources to purchasing agriculture conservation easements.
8. Requiring a review of state projects and state or federally funded projects to determine if the project will result in the conversion of farmland to a nonagricultural use. Prior to approval of a project that proposes conversion, an impact assessment and consideration of alternatives must be examined. An approval must include mitigation requirements when impact on farmland cannot be reasonably avoided.
9. Prohibiting the use of eminent domain to acquire farmland when the purpose of the acquisition is recreational use or securing aesthetic or therapeutic benefits from the land.
10. Providing more specific guidelines pertaining to farmland protection for implementation of Maine's growth management laws and that the State Planning Office and DAFRR develop a model ordinance for farmland protection as a resource for municipal and regional planning committees.

I hope you find this information useful. Please let me know if you have any questions on this research or if you need additional research conducted on this topic.