

(After Deadline)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1746

H.P. 1276 House of Representatives, June 4, 1987
Approved for introduction by a majority of the
Legislative Council pursuant to Joint Rule 27.
Referred to the Committee on Agriculture. Sent up for
concurrence and ordered printed. Ordered sent forthwith.
EDWIN H. PERT, Clerk
Presented by Representative LISNIK of Presque Isle.
Cosponsored by Representatives NUTTING of Leeds, RIDLEY
of Shapleigh, and Senator PERKINS of Hancock.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

1 AN ACT to Conserve Agricultural Production
2 Capability and to Promote Harmony
3 between Agriculture and Adjacent
4 Development.
5

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

8 7 MRSA c. 2-A is enacted to read:

9 CHAPTER 2-A

10 AGRICULTURAL LAND AND ADJACENT DEVELOPMENT

11 §41. Purpose

12 The Legislature declares its intent to be as fol-
13 lows:

by
June 11
11:50 a.m.
Rm. 134
J

1 1. Production capacity. To conserve agricultur-
2 al production capacity for present needs and for the
3 future;

4 2. Harmony. To promote harmony between agricul-
5 ture and adjacent nonfarm development;

6 3. Responsibility. To recognize the mutual re-
7 sponsibility of agricultural operators and persons
8 siting nonfarm development adjacent to farmland to
9 take steps to accommodate each others' concerns;

10 4. Information. To institute a program whereby
11 owners of agricultural land may voluntarily ensure
12 that purchasers of adjacent property will be informed
13 in advance of purchase of the existence of an adja-
14 cent farm operation; and

15 5. Distance. Where farmland is registered for
16 the application of agricultural chemicals by spray
17 application, to provide some accommodation both for
18 that activity and for adjacent nonfarm development by
19 distancing them from each other.

20 §42. Definitions

21 As used in this chapter, unless the context indi-
22 cates otherwise, the following terms have the follow-
23 ing meanings.

24 1. Abutting land. "Abutting land" means real
25 estate which shares a common boundary, or portion of
26 a boundary, with registered farmland.

27 2. Agricultural chemicals. "Agricultural chemi-
28 cals" means fungicides, insecticides, herbicides,
29 pesticides and fertilizers, including lime.

30 3. Apply; applied. "Apply" and "applied," with
31 respect to agricultural chemicals, means application
32 of agricultural chemicals to registered farmland by
33 any method of spray application, whether aerial or on
34 the ground, including hand-held and portable spray
35 equipment.

36 4. Common boundary. "Common boundary" means a
37 single boundary line which marks both a boundary of

1 registered farmland and a boundary of abutting land.
2 Where registered farmland and abutting land are sepa-
3 rated by a road, their common boundary shall be the
4 boundary of the registered farmland.

5 5. Farmland. "Farmland" means any tract or
6 tracts of land, including woodland or wasteland, of
7 at least 10 contiguous acres on which farming or ag-
8 ricultural activities have produced a gross income
9 per year in one of the 2 or 3 of the 5 calendar years
10 preceding the date of application for classification
11 of at least:

12 A. One thousand dollars for 10 acres; and

13 B. One hundred dollars per acre for each acre
14 over 10, with the total income required not to
15 exceed \$2,000.

16 Gross income as used in this section includes the
17 value of any commodities produced for consumption by
18 the farm household.

19 6. Inconsistent development upon or use of.
20 "Inconsistent development upon or use of" means de-
21 velopment upon or use of land which is:

22 A. Initiated after the effective date of this
23 chapter;

24 B. Within 150 feet of a common boundary between
25 the land in question and registered farmland on
26 which farmland agricultural chemicals are applied
27 or intended to be applied within one year; and

28 C. Of any of the following kinds or used for any
29 of the following purposes:

30 (1) Residential buildings;

31 (2) School buildings and any playgrounds,
32 athletic fields or other school facilities
33 designed for use by children in the vicinity
34 of school buildings;

35 (3) Commercial or other buildings for human
36 use, including, without limitation, places

1 of business, places of worship and other
2 commercial and institutional buildings;

3 (4) Recreational areas open to public ac-
4 commodation, including, without limitation,
5 public and commercial campgrounds, picnic
6 areas, roadside rest areas, publicly owned
7 or maintained hiking trails, park and recre-
8 ation facilities, playgrounds, playing
9 fields and other areas for organized sports
10 or recreation;

11 (5) Apiaries registered with the Department
12 of Agriculture, Food and rural Resources
13 pursuant to section 2701;

14 (6) Critical areas designated by the Board
15 of Pesticides Control pursuant to Title 22,
16 section 1471-M, subsection 2;

17 (7) Public and private wells, drinking wa-
18 ter springs and water supply intake points;

19 (8) Cultivated land, cropland, gardens or
20 cleared areas where livestock are contained
21 or pastured; or

22 (9) Rights-of-way of public highways,
23 streets, roads and other publicly maintained
24 rights-of-way.

25 §43. Registration

26 1. Filing. No later than February 1st of each
27 year, an owner of farmland may register all or any
28 designated portion of his farmland in the office of
29 the municipality or municipalities in which the
30 farmland is located. Registration shall be accom-
31 plished by completing and filing a form in the munic-
32 ipal office to be provided by the Department of Agri-
33 culture, Food and Rural Resources to municipalities.
34 A registration made under this chapter remains effec-
35 tive until withdrawn in accordance with subsection 4
36 or until the registered property is sold.

37 2. Contents. A registration shall clearly identi-
38 fify the registered farmland and shall describe the

1 nature of the farming activity or activities con-
2 ducted on the farmland. In the case of an owner who
3 applies, or intends to apply within one year, agri-
4 cultural chemicals on the registered farmland, the
5 registration must include the identity and the nature
6 of the chemicals applied or intended to be applied.

7 3. Application. The prohibition established in
8 section 45, subsection 1, applies to an owner of land
9 abutting registered farmland who owns the abutting
10 land at the time the farmland is registered only if
11 the owner has received from the owner of the regis-
12 tered farmland a copy of the registration. Mailing
13 of the copy by certified mail shall be deemed to be
14 receipt.

15 4. Municipal registry. Each municipality shall
16 establish and maintain a registry of farmland con-
17 sisting of registrations made pursuant to subsections
18 1 and 2. The registry shall be operated in a manner
19 that makes the information easily accessible to in-
20 terested persons and effective to inform them as to
21 the existence in the registry of particular farmland.
22 Each municipality shall also maintain a similarly ac-
23 cessible and effective filing system in which shall
24 be filed notices of removal of farmland from regis-
25 tration in accordance with subsection 5.

26 5. Withdrawal from registry; notice. No later
27 than February 1st of each year, an owner of regis-
28 tered farmland, regardless of whether the farmland
29 was registered by himself or by another person, may
30 withdraw the farmland from registration by filing a
31 written notice of withdrawal in the municipal office
32 or offices in which the farmland was registered.
33 Upon receipt of the notice of withdrawal, the muni-
34 cipality shall remove the related registration from the
35 registration file and shall file the withdrawal no-
36 tice in accordance with subsection 4.

37 6. Amendment of registration. No later than
38 February 1st of each year, an owner of registered
39 farmland, regardless of whether the farmland has been
40 registered by himself or by another person, may amend
41 a registration by filing both a new registration and
42 a notice of withdrawal of the previously filed regis-
43 tration. Upon receipt of a new registration which

1 amends a previously filed registration, together with
2 a notice of withdrawal of the previously filed registra-
3 tion, the municipality shall remove the previously
4 filed registration from the registration file, file
5 the new registration in the registration file and
6 file the notice of withdrawal in accordance with sub-
7 section 4.

8 7. Fees. A municipality may charge a fee for
9 the filing of registrations and withdrawal notices
10 which shall not exceed \$20 for each document. The
11 municipality may refuse to file a registration or
12 withdrawal notice until the fee is paid.

13 §44. Consequences of registration

14 1. Disclosure required. Every seller of real
15 estate and every agent of a seller shall disclose in
16 writing, in a purchase and sale agreement for the
17 real estate, if there is such an agreement, but in
18 any event prior to the completion of the sales trans-
19 action, the existence of registered farmland abutting
20 any boundary or portion of a boundary of the real es-
21 tate offered for sale. The disclosure shall identify
22 the registered farmland and the nature of the farming
23 activity or activities, as set forth in the registra-
24 tion of the farmland.

25 2. Inconsistent development. In the case of
26 registered farmland on which the registrant has indi-
27 cated that agricultural chemicals are applied, or are
28 intended to be applied within one year, in addition
29 to disclosure of the existence of registered
30 farmland, as required by subsection 1, and at the
31 same time, the seller of real estate or the agent of
32 the seller shall disclose in writing to the buyer
33 that inconsistent development upon or use of the real
34 estate offered for sale within 150 feet of any common
35 boundary of that real estate and the registered
36 farmland is prohibited as provided in section 45.

37 §45. Prohibited acts

38 1. Inconsistent development. No person may un-
39 dertake or allow any inconsistent development upon or
40 use of land within 150 feet of registered farmland on
41 which the registrant has indicated that agricultural

1 chemicals are applied or are intended to be applied
2 within one year.

3 2. Building permit. No municipality may issue a
4 building or use permit allowing within 150 feet of
5 any common boundary between the registered farmland
6 and the other real estate any inconsistent develop-
7 ment upon or use of land abutting registered farmland
8 on which the registrant has indicated that agricul-
9 tural chemicals are applied or are intended to be ap-
10 plied within one year. No permit issued by any mu-
11 nicipality allowing such inconsistent development
12 upon or use of any such land is valid.

13 3. Set-back requirements. Any local set-back
14 requirements of 150 feet or less shall be included
15 in, not added to, the 150-foot requirement estab-
16 lished by subsections 1 and 2.

17 4. Road as boundary. Where a road separates
18 registered farmland and abutting land, the width of
19 the road shall be included in, not added to, the
20 150-foot requirement established by subsections 1 and
21 2.

22 §46. Violation; penalties

23 1. Failure to disclose. It is a violation of
24 this chapter to fail or refuse to disclose the exis-
25 tence of registered farmland as required by this
26 chapter.

27 2. Inconsistent development. It is a violation
28 of this chapter to undertake or allow within 150 feet
29 of any common boundary between the registered
30 farmland and the abutting land any inconsistent de-
31 velopment upon or use of land abutting registered
32 farmland on which the registrant has indicated that
33 agricultural chemicals are applied or are intended to
34 be applied within one year.

35 3. Penalties. Violation of this chapter shall
36 be punishable as follows:

37 A. In the case of failure or refusal to disclose
38 the existence of registered farmland on which the
39 registrant has indicated that agricultural chemi-

1 cals are applied, or intended to be applied with-
2 in one year, the contract for sale of the real
3 estate or the sale itself may be voided by the
4 buyer and any money deposited or paid by the buy-
5 er to the seller or the agent of the seller shall
6 be returned to him. The failure or refusal to
7 disclose does not affect the applicability of the
8 prohibitions set forth in section 45.

9 B. Any inconsistent development upon or use of
10 the abutting land in violation of this chapter
11 may be ordered to be removed or discontinued by
12 the court in a proceeding to enforce this chap-
13 ter.

14 §47. Variance

15 1. Who may apply. An owner of real estate, the
16 boundaries of which were established by survey or
17 similar definite and clear means prior to the effec-
18 tive date of this chapter, may apply to the appropri-
19 ate local agency with authority to grant variances
20 from local ordinances or codes for a variance permit-
21 ting an inconsistent development upon or use of land
22 abutting registered farmland within 150 feet of the
23 common boundary of the land and the registered
24 farmland.

25 2. Requirements. The local authority may grant
26 a variance only if the applicant proves that if he is
27 required to observe the 150-foot requirement he will
28 be prevented from using the land for the purpose for
29 which, prior to the effective date of this chapter,
30 he had intended to use it. "Prevented from using the
31 real estate" means the inability to use it for the
32 intended purpose and does not include mere changes in
33 the intended location of any development upon or use
34 of the land or mere changes in the design or con-
35 struction of any intended development or use.

STATEMENT OF FACT

1

2 This bill provides for registration of farmland
3 with municipalities, which will protect that farmland
4 from inconsistent development on adjacent property.
5 Certain types of development will be prohibited with-
6 in 150 feet of the registered farmland. Real estate
7 agents will be required to disclose the existence of
8 the registered farmland to potential buyers of abut-
9 ting property.

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