

STATE OF MAINE

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

H.P. 1842 - L.D. 2522

AN ACT to Promote Harmony between
Agriculture and Adjacent Development and to
Protect the Public Health, Safety and
General Welfare.

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

Whereas, with the rapid pace of land development in the State, it is desirable to take action as soon as possible to minimize the incompatibility between agricultural uses and the development of adjacent areas;

Whereas, the public health, safety and general welfare require that the Legislature move immediately to impose reasonable restrictions on residential and certain other types of land development which adjoins farmland on which will take place chemical applications and related agricultural activities that are incompatible with such development; 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:

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

CHAPTER 2-A

AGRICULTURAL LAND AND ADJACENT DEVELOPMENT

§41. Purpose

The Legislature finds that the public health, safety and welfare is threatened when land immediately adjacent to farmland is developed for human habitation. This development and the uses incident to it are inconsistent with various activities commonly engaged in on farmland, such as the application of agricultural chemicals. The Legislature declares that the purposes of this chapter are:

1. Health impacts. To minimize any health or other adverse impacts which common agricultural activities may have on the occupants of land adjacent to farmland;

2. Agricultural activities. To protect the ability of farmers to engage in common agricultural activities with minimal potential for causing harm to their neighbors;

3. Full land use. To permit the owners of both farmland and adjacent land to maintain to the highest degree possible the full use and enjoyment of their land, but to recognize the importance of agriculture to the economic and social welfare of the State;

4. Production capacity. To conserve agricultural production capacity for present needs and for the future;

5. Harmony. To promote harmony between agriculture and adjacent nonfarm development;

6. Responsibility. To recognize the mutual responsibility of agricultural operators and persons siting nonfarm development adjacent to farmland to take steps to accommodate each other's concerns and the public interest;

7. Public Records. For purposes of administering this regulatory program, to create in each municipality a register of farmland which will provide a public record and enable disclosure to the public regarding the existence of active farming operations in the community which may be incompatible with residential development on lands in the immediate vicinity; and

8. Distance. When farmland is registered for the application of agricultural chemicals, to provide some accomodation for that activity and for adjacent nonfarm developments by distancing them from each other and by providing a reasonable setback for new residential and other particularly sensitive types of development from actively used agricultural land.

§42. Definitions

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

1. Abutting land. "Abutting land" means real estate which shares a common boundary, or portion of a boundary, with registered farmland. If a road forms a common boundary with registered farmland, the road shall be considered part of the land adjoining the road opposite the registered farmland and the land opposite the registered farmland will be considered abutting land.

2. Agricultural chemicals. "Agricultural chemicals" means fungicides, insecticides, herbicides, and other pesticides.

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.

4. Farmland. "Farmland" means any tract or tracts of land, the use of which is commercial farming and which meets both of the following criteria:

A. It consists of 5 or more contiguous acres; and

B. It has produced a gross income which averages at least \$300 per acre for at least 3 of the previous 5 calendar years.

5. Inconsistent development or use.
"Inconsistent development or use":

A. Means development or use of land which:

(1) Is initiated after the registration of the abutting farmland under this chapter;

(2) Takes place upon abutting land within 150 feet of registered farmland to which agricultural chemicals are applied or intended to be applied, as stated in the registration; and

(3) Is of any of the following kinds or is used for any of the following purposes:

(a) Residential buildings;

(b) Public and private wells, drinking water springs and water supply intake points;

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

(d) Commercial establishments dispensing or selling food; and

(e) Public and commercial campgrounds and picnic areas; and

B. Does not include any:

(1) Expansion of an existing use; provided that, when the existing use includes a building, the expansion does not increase the total floor area of the building by more than

100% and the expansion is no closer to the registered farmland than is the existing building; or

(2) Replacement or reconstruction of an existing building or structure which is damaged or destroyed by fire or other casualty and which is replaced or reconstructed within 2 years of such damage or destruction.

§43. Registration

1. Filing. An owner of farmland may register, in the office of the municipality or municipalities in which the farmland is located, all or any designated portion of the farmland upon which the owner applies or intends to apply agricultural chemicals. The registration shall occur between April 15, 1988, and May 1, 1988, or January 15th and February 1st of 1989, 1990 or 1991. In the event there is no official municipal office, the registration shall take place with the town assessor. In case the farmland is located in the unorganized territory, the registration shall take place in the office of the county in which the farmland is located. A registration made under this chapter remains effective until withdrawn in accordance with subsection 4. A copy of the municipal or county registration and any amendment or withdrawal shall also be recorded in the registry of deeds of the county in which the registered farmland or any abutting property is located.

2. Contents and purpose. The purpose of a registration is to provide a public record, maintained by each municipality, of the existence of actively used farmland, which will require public disclosure under section 45 and the setback of incompatible development under section 46. A registration shall identify the name and address of the landowner, the types of products which are grown on the farmland to be registered, the acreage of farmland to be registered and the gross income of the farmland for each of the previous 5 years. The registration shall include a copy of the municipal tax map, where available, clearly showing the location of the farmland, together with a statement of the tax parcel

number or numbers which include the farmland at issue and a copy of the registrant's deed. The registration shall also include the names and addresses of each abutting landowner to whom notice is being sent pursuant to subsection 3. The registration shall further include a statement of the owner's intention to apply or permit the application of agricultural chemicals upon the registered farmland, together with a statement of the type or types of chemicals which will be applied. The department shall prepare registration forms including these contents and such other informational requirements as the department deems necessary for the effective operation of this program. These forms shall be used by municipalities and registrants.

3. Notice. The owner registering farmland shall notify all abutting landowners, as indicated on municipal or state tax records, of the registration by sending by registered mail to abutting landowners a copy of the registration information filed pursuant to subsection 1.

4. Withdrawal from registry. An owner of farmland must withdraw the farmland from registration if it no longer qualifies under this chapter. An owner of registered farmland may withdraw the farmland from registration by filing a written notice of withdrawal in the municipal office or other office in which the farmland was registered. Any abutters shall be notified as provided in subsection 3.

5. Amendment of registration. Amendments or withdrawals from land registered may be made during the periods April 15, 1988, to May 1, 1988, or January 15th to February 1st of each year thereafter. Any abutters shall be notified as provided in subsection 3.

6. Municipal registry. Each municipality shall establish and maintain a registry of farmland which must be current by June 15, 1988, and annually by March 15th thereafter, to include registrations, amendments and withdrawals. The registry shall be operated in a manner that makes the information reasonably accessible to interested persons and effective to inform them of the existence in the registry of particular farmland.

7. Fees. A municipality may charge a fee for the filing of registrations which shall not exceed \$25 for each registration. The municipality may refuse to file a registration until the fee is paid.

§44. Proceedings

An abutting landowner or the municipality may institute any of the following proceedings with the zoning board of appeals, or, if none, with the municipal body which hears zoning appeals:

1. Proceeding to determine eligibility of farmland for registration. If such a proceeding is initiated, the owner of the farmland shall have the burden of proving to the municipal body that the farmland meets the requirements for registration under this chapter. The proceeding shall be commenced within 15 days after receipt of notice of registration. Farmland registration shall not be effective until the expiration of 15 days after receipt of notice by the municipality and abutting owners as required in this chapter or, if review proceedings are initiated under this paragraph upon the decision of the municipality upholding the registration.

2. Proceedings to determine continued eligibility of registered farmland. Upon petition of any abutting owner or of the municipality, the owner of registered farmland shall have the burden of proving to the municipal body that the registered farmland continues to meet the requirements for registration under this chapter. The proceedings may be initiated only once in any 2-year period.

3. Appeals. A decision made by a municipal body under this section may be appealed by any aggrieved party as allowed by law for appeals of decisions made by a zoning board of appeals.

4. Assistance from department. Upon request of any municipality, the department shall provide technical assistance in connection with the determinations the municipality must make under this section.

§45. Disclosure required

Provided proper notification was given at the time the farmland was first registered, every seller of real estate and every agent of a seller shall disclose in writing in a purchase and sale agreement for the real estate or, if there is no such agreement, prior to the sales transaction, the existence of registered farmland abutting any boundary or portion of a boundary of the real estate offered for sale.

The existence of the registered farmland shall also be stated on any declaration of value, as provided pursuant to Title 36, section 4641-D, covering the transfer of title to abutting land.

§46. Prohibited acts

1. Inconsistent development. No owner of abutting land may undertake or allow any inconsistent development upon or use of land within 150 feet of properly registered farmland.

2. Building permit. Except as provided in section 47, no municipality may issue a building or use permit allowing any development which is prohibited under subsection 1.

3. Exemption. This section shall not apply to any lot or parcel of land which, together with any adjoining lot or parcel in the same ownership, was one acre or less in area as of January 1, 1988.

§47. Variance

An owner of real estate may apply to the municipal zoning board of appeals or other municipal body hearing zoning appeals, or, in the case of areas within its jurisdiction, the Maine Land Use Regulation Commission, for a variance permitting an inconsistent development upon or use of land which is otherwise prohibited under section 46. Such a variance shall be issued only upon the finding that the criteria set forth in Title 30, section 4963, subsection 3, for variances are satisfied.

§48. Enforcement and penalties

1. Enforcement. Proceedings to enforce any provision of this chapter may be brought by a municipality, county or any aggrieved person. Such proceedings may be initiated in accordance with the provisions of the Maine Rules of Civil Procedure, Rule 80B, as applicable.

2. Remedies. Any violation of this chapter shall be punishable as follows:

A. In the case of failure to disclose the existence of registered farmland as provided by section 45, any contract or other agreement for the purchase and sale of real estate may be declared void by the buyer up until the passing of title to the buyer. If the buyer declares the contract or agreement void under the provisions of this paragraph, any money deposited or paid by the buyer to the seller or the agent of the seller shall be returned to the buyer.

B. Any inconsistent development upon or use of land in violation of this chapter may be removed or discontinued by order of the court in a proceeding to enforce this chapter, and the court may fashion any other appropriate equitable remedy consistent with the purposes of this chapter.

C. Any person who violates any provisions of this chapter shall, in addition to the other provisions of this section, be subject to the civil penalties and enforcement procedures for land use laws and ordinances in Title 30, section 4966.

§49. Other laws not affected

Nothing in this chapter may affect the legal rights, remedies or liabilities of persons arising out of negligence or other wrongful acts or omissions involving the use of pesticides or other agricultural chemicals.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.