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H.P. 1089

House of Representatives, April 18, 2023

An Act to Protect Agricultural Lands by Creating a Permitting Process for Solar Development on Those Lands

Reference to the Committee on Environment and Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative PLUECKER of Warren.

Cosponsored by Representatives: CRAFTS of Newcastle, CRAY of Palmyra, DODGE of Belfast, GUERRETTE of Caribou, JAUCH of Topsham, SHAW of Auburn, Senators: BLACK of Franklin, INGWERSEN of York.

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

2 Sec. 1. 12 MRSA §5019 is enacted to read:

3 **§5019. Permitting process for ground-mounted solar installations on agricultural**
4 **land**

5 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
6 following terms have the following meanings.

7 A. "Department" means the Department of Agriculture, Conservation and Forestry.

8 B. "Farm product" means a plant or animal that is useful to humans, including fruits,
9 berries, vegetables, dairy products, livestock or livestock products, poultry or poultry
10 products, grains, forages, flowers, seeds, grasses, hay, silage, livestock feed, bees,
11 Christmas trees, maple syrup and similar products.

12 C. "Ground-mounted solar installation" means a solar electrical system that is installed
13 directly on the ground instead of solely on a wall or roof of a building.

14 D. "Viable agricultural land" means land highly suitable for agricultural production of
15 a farm product. "Viable agricultural land" does not include homes, farm buildings,
16 roads or lawns.

17 **2. Permit required.** A person may not develop, install or build any ground-mounted
18 solar installation without first obtaining a permit from the department if the activity is
19 located in, on or over any viable agricultural land.

20 **3. Permit approval; standards.** The department shall grant a permit requested under
21 subsection 2 upon proper application and upon such terms as the department considers
22 necessary to fulfill the purposes of this section. The department may grant a permit only if
23 it determines that the value of the ground-mounted solar installation exceeds the value of
24 the agricultural land. The department shall grant a permit when the department finds that
25 the applicant has demonstrated that the proposed activity meets the following standards, as
26 applicable:

27 A. The agricultural land has been proven to be contaminated and therefore unsuitable
28 to the production of human or livestock feed;

29 B. The agricultural land has been developed and it is not economically feasible to return
30 to agricultural production;

31 C. The societal benefit of distributed energy production on the agricultural land
32 outweighs the economic, cultural and societal benefit of food production, and the
33 specific parcel has unique qualities that increase its value for solar development over
34 another identified parcel;

35 D. The economic benefit of distributed energy production on the agricultural land
36 contributes to the viability of a farm business or an agricultural operation, such as
37 through meeting or partially meeting on-farm energy needs or generating a needed
38 alternative source of farm revenue, and the ground-mounted solar installation will be
39 located in such a way so that food production on the property can continue. The
40 landowner must demonstrate that a solar installation on agricultural land is ancillary to
41 the use of the property for agriculture or located in an area that has less agricultural

1 value relative to the rest of the property or otherwise situated in a way that allows for
2 continued agriculture uses now or in the future;

3 E. Commercial food production will continue on the site of the ground-mounted solar
4 installation for the reasonably expected economic life of the solar development. If the
5 site of the installation is owned by a commercial farming operation, the farming
6 operation must demonstrate the economic benefit of the installation to food production
7 so that there is a net increase in economic food value, net food production or
8 agroecological benefit to the farm; or

9 F. Installation of the ground-mounted solar installation will have minimal long-term
10 impact on soil health, including by using panels or pilings that sit on top of the soil
11 rather than poured cement.

12 An entity proposing to construct a ground-mounted solar installation must demonstrate
13 adequate financial capacity to decommission the installation at any time during
14 construction or operation of the installation or upon termination of installation operations
15 for any reason. The obligation to decommission the installation must be transferred to any
16 future owner of the installation in the event of a transfer of title. Decommissioning is
17 required if the installation's purpose or use is abandoned for a period of one year at any
18 time after construction begins. Demonstration of financial capacity to decommission must
19 include documentation of financial assurance that the decommissioning costs will be fully
20 funded prior to the start of construction. Financial assurance may be demonstrated in the
21 form of a performance bond, surety bond, letter of credit or other form of financial
22 assurance acceptable to the department. In the case of land that is not contaminated or was
23 developed before the installation, decommissioning must return the land to a state
24 appropriate for agricultural use.

25 **4. Permit approval; administrative procedures.** The department shall process all
26 permits requested under this section in accordance with this subsection.

27 A. The department shall organize a public hearing on a permit request upon request.

28 B. The department may not review a permit without notifying the municipality in which
29 the proposed activity is to occur. The municipality may provide comments within a
30 reasonable period established by the commissioner, and the commissioner shall
31 consider any such comments.

32 C. The department may not review a permit without notifying the Maine Land Use
33 Planning Commission if the ground-mounted solar installation is going to occur on
34 land over which the Maine Land Use Planning Commission has jurisdiction. The
35 Maine Land Use Planning Commission may provide comments within a reasonable
36 period established by the commissioner, and the commissioner shall consider any such
37 comments.

38 **5. Delegation of authority to municipality; home rule.** This subsection governs the
39 delegation to a municipality of the authority to issue permits under this section.

40 A. A municipality may apply to the department for authority to issue all permits under
41 this section or for partial authority to process applications for permits involving
42 ground-mounted solar installations on specified viable agricultural land. The
43 department shall grant such authority if it finds that the municipality has:

44 (1) Established a planning board and a board of appeals;

1 (2) Adopted a comprehensive plan and related land use ordinances determined by
2 the former State Planning Office or the department to be consistent with the criteria
3 set forth in Title 30-A, chapter 187, subchapter 2 and determined by the
4 commissioner to be at least as stringent as criteria set forth in subsection 3;

5 (3) The financial, technical and legal resources to adequately review and analyze
6 permit applications and oversee and enforce permit requirements;

7 (4) Made provision by ordinance or rule for:

8 (a) Prompt notice to the commissioner of all applications received; and

9 (b) Prompt notice to the public upon receipt of an application and written
10 notification to the applicant and the commissioner of the issuance or denial of
11 a permit stating the reasons for issuance or denial, except for those applications
12 for which no public notice or written decision is required;

13 (5) Provided an application form that is substantially the same as that provided by
14 the commissioner; and

15 (6) Appointed a code enforcement officer, certified pursuant to Title 30-A, section
16 4451.

17 B. The following procedures apply to applications under this section processed by
18 municipalities.

19 (1) No permit issued by a municipality may become effective until 30 days
20 subsequent to its receipt by the commissioner, but, if the permit is approved by the
21 department in less than 30 days, the effective date is the date of approval. A copy
22 of the application for the permit and the permit issued by the municipality must be
23 sent to the commissioner, immediately upon its issuance, by registered mail. The
24 department shall review that permit and either approve, deny or modify it as
25 necessary. If the department does not act within 30 days of the department's receipt
26 of the permit from the municipality, this constitutes the department's approval and
27 the permit is effective as issued, except that within this 30-day period the
28 department may extend the time for departmental review an additional 30 days.

29 (2) A copy of the municipality's action to approve or deny an application must be
30 sent to the commissioner within 14 days of the municipality's decision.

31 C. Nothing in this section may be understood or interpreted to limit the home rule
32 authority of a municipality to protect the agricultural land of the municipality through
33 enactment of standards that are more stringent than those found in this section.

34 D. Any person who violates any permit issued under this section is subject to the
35 provisions of Title 38, section 349 in addition to any penalties that the municipality
36 may impose. The provisions of this section may be enforced by the commissioner and
37 the municipality that issued the permit.

38 E. This paragraph governs the department's review of delegated authority under this
39 subsection.

40 (1) If the department finds that a municipality has failed to satisfy one or more of
41 the criteria identified in paragraphs A and B, the department shall notify the

municipality accordingly and make recommendations to establish compliance. The municipality may then submit a modified application for approval.

(2) If, at any time, the department determines that a municipality may be failing to exercise its permit-granting authority in accordance with its approval procedures, the department shall notify the municipality of the specific alleged deficiencies and shall order a public hearing, for which adequate public notice must be given, to be held in the municipality to solicit public or official comment on the alleged deficiencies. Following the hearing, if the department finds such deficiencies, the department shall revoke the municipality's permit-granting authority. The municipality may reapply for authority at any time.

6. Violations; enforcement. A person may not violate subsection 2. Each day of a violation must be considered a separate offense. A finding that any violation has occurred is prima facie evidence that the activity was performed or caused to be performed by the owner of the property where the violation occurred. The department shall enforce the provisions of this section.

7. Research. The commissioner, in cooperation with other state agencies, is authorized to conduct research and studies to determine how agricultural lands can be restored and enhanced.

8. Funds. The department is the public agency of the State authorized to accept funds, public and private, for the purposes of this section.

9. Fees. Notwithstanding Title 5, section 8071, subsection 3, the commissioner shall adopt rules to establish procedures to charge applicants fees for costs incurred in reviewing permit applications regarding ground-mounted solar installations. Those fees must be scaled according to the economic and land use impact of the installation. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

SUMMARY

This bill establishes a permitting process to develop, install or build any ground-mounted solar installation on or over any viable agricultural land.