

# MAINE STATE LEGISLATURE

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New Draft of H. P. 14, L. D. 14

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ONE HUNDRED AND FIFTH LEGISLATURE

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**Legislative Document**

**No. 1834**

H. P. 1418

House of Representatives, June 15, 1971

Reported by a Majority of the Committee on Taxation and printed under  
Joint Rules No. 18.

BERTHA W. JOHNSON, Clerk

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-ONE

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**AN ACT Providing for the Taxation and Preservation of Farm, Forest  
and Open Space Land.**

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

R. S., T. 36, §§ 566-575, additional. Title 36 of the Revised Statutes is amended by adding 10 new sections, 566 to 575, to read as follows:

§ 566. Purpose

It is declared that it is in the public interest to encourage the preservation of farmland, forest land and open space land in order to maintain a readily available source of food and farm products close to the metropolitan areas of the State, to conserve the State's natural resources and to provide for the welfare and happiness of the inhabitants of the State, that it is in the public interest to prevent the forced conversion of farmland, forest land and open space land to more intensive uses as the result of economic pressures caused by the assessment thereof for purposes of property taxation at values incompatible with their preservation as such farmland, forest land and open space land, and that the necessity in the public interest of the enactment of sections 566 to 574 is a matter of legislative determination.

§ 567. Definitions

When used in sections 566 to 574, unless the context otherwise indicates, the following words shall have the following meanings:

1. Farmland. "Farmland" means any tract or tracts of land including woodland and wasteland constituting a farm unit of at least 10 contiguous acres or farming activities which produce a gross income of at least \$1,000

per year for 3 of the 5 calendar years preceding the date of application for classification.

2. Forest land. "Forest land" means any tract of land, except those designated in section 656, subsection 1, paragraph D, aggregating 25 contiguous acres or more devoted primarily to the growth and harvest of forest crops.

3. Open space land. "Open space land" means any area of land, including state wildlife and management areas, sanctuaries and preserves designated as such in Title 12, forest land and farmland, the preservation or restriction of the use of which would:

- A. Conserve scenic resources;
- B. Enhance public recreation opportunities;
- C. Promote game management; or
- D. Preserve wildlife.

4. Comprehensive plan. "Comprehensive plan" means a plan of development, including any amendment thereto, prepared or adopted by the planning board.

5. Planning board. "Planning board" means a planning board created for the purpose of planning in any municipality.

#### § 568. Classification as farmland

An owner of land may apply for its classification as farmland by filing a written application for such classification on or before April 1st with the assessors of the municipality in which such land is located, or with the State Tax Assessor if the land is not within a municipality. The municipal assessors, or the State Tax Assessor, to whom an application has been made, shall determine whether such land is farmland and, if so, it shall be valued and classified in accordance with section 571. In determining whether such land is farmland, there shall be taken into account, among other things, the acreage of such land, the portion thereof in actual use for farming or agricultural operations, the productivity of such land, the gross income derived therefrom, the nature and value of the equipment used in connection therewith and the extent to which the tracts comprising such land are contiguous. All applications for classification of land as farmland shall be made upon a form prescribed by the State Tax Assessor and shall set forth a description of the land, including the total acreage thereof, a general description of the use to which it is being put, the gross income derived from farming activities on the land in the 5 previous calendar years and such other information as may aid in determining whether such land qualifies for such classification.

Failure to file an application for classification of land as farmland, within the time prescribed and in the manner and form prescribed, shall be considered a waiver of the right to such classification.

#### § 569. Designation as forest land

An owner of land may file a written application with the Forest Commis-

sioner for its designation by the Forest Commissioner as forest land. When such application has been made, the Forest Commissioner shall examine the land and, if he determines that it is forest land, he shall issue a triplicate certificate designating it as such, and file one copy of such certificate in his office, furnish one to the owner of the land and file one in the office of the assessor of the municipality in which the land is located or in the office of the State Tax Assessor if the land is not within a municipality. The Forest Commissioner may deny the application by issuing a triplicate notice of denial and by filing one copy of such denial in his office, furnishing one copy to the owner of the land and filing one copy in the office of the assessor of the municipality in which the land is located or the office of the State Tax Assessor if the land is not within a municipality. The application shall be deemed to be denied if not acted upon by the Forest Commissioner within 60 days of the date on which the application was filed with the Forest Commissioner.

When requested to do so by an assessor or whenever he deems it necessary, the Forest Commissioner shall reexamine land designated by him as forest land and, if he finds that it is no longer forest land, he shall issue a triplicate certificate cancelling his designation of such land as forest land and file one copy of such certificate in his office, furnish one to the owner of the land and file one in the office of the assessor of the municipality in which the land is located or the office of the State Tax Assessor if the land is not within a municipality. An owner of land, designated as forest land by the Forest Commissioner, may apply for its classification as forest land by filing a written application on or before April 1st for such classification with the assessor of the municipality in which the land is located or with the State Tax Assessor if the land is not within a municipality. If the Forest Commissioner has not cancelled his designation of the applicant's land as forest land as of a date at or prior to the date of the assessment list, the assessor shall classify such land as forest land and include it as such on the assessment list.

An application to the Forest Commissioner for designation of land as forest land shall be made upon a form prescribed by the Forest Commissioner and shall set forth a description of the land and such other information as the Forest Commissioner may require to aid him in determining whether such land qualifies for such designation. An application to an assessor for classification of land as forest land shall be made upon a form prescribed by the State Tax Assessor and shall set forth a description of the land and the date of the issuance by the Forest Commissioner of this certificate designating it as forest land.

Failure to file an application for classification of land as forest land, within the time prescribed and in the manner and form prescribed, shall be considered a waiver of the right to such classification on such assessment list.

The municipality within which land designated as forest land is situated, the State Tax Assessor if land designated as forest land is not within a municipality, or the owner of land which the Forest Commissioner has refused to designate as forest land, may appeal from the decision of the Forest Commissioner under the conditions provided for in section 846.

**§ 570. Planning board; open space land**

The planning board of any municipality in preparing a comprehensive plan for such municipality or the Maine Land Use Regulation Commission in preparing a comprehensive plan for the area not within a municipality may designate upon such plan areas which it recommends for preservation as areas of open space land. Land included in any area so designated upon such plan as finally adopted may be classified as open space land for purposes of property taxation, if there has been no change in the use of such area which has adversely affected its essential character as an area of open space land between the date of the adoption of such plan and the date of such classification. An owner of land, included in any area designated as open space land, upon any plan as finally adopted, or an owner of land not within a municipality who believes that his land should qualify as open space land, may apply for its classification as open space land by filing a written application for such classification on or before April 1st with the municipality in which the land is located or with the State Tax Assessor if the land is not within a municipality. The assessor shall determine whether there has been any change in the area designated as an area of open space land upon the comprehensive plan which adversely affects its essential character as an area of open space land and, if he determines that there has been no such change, he shall classify such land as open space land and include it as such on the assessment list. An application for classification of land as open space land shall be made upon a form prescribed by the State Tax Assessor and shall set forth a description of the land, a general description of the use to which it is being put, and such other information as the assessor may require to aid him in determining whether such land qualifies for such classification. The application must first be approved as to its compliance with respect to the comprehensive plan. Such approval shall be given by the planning board for land within a municipality and by the Maine Land Use Regulation Commission for land not within a municipality.

Failure to file an application for classification of land as open space land, within the time limit prescribed and in the manner and form prescribed, shall be considered a waiver of the right to such classification on such assessment list.

**§ 571. Scenic easements and development rights**

Any municipality may, through donation or the expenditure of public funds, accept or acquire scenic easements or development rights for preserving property for the preservation of agricultural farmland, forest land or open space. The term of such scenic easements or development rights must be for a period of at least 10 years.

**§ 572. Value**

The present true and actual value of any land classified as farmland pursuant to section 568, as forest land pursuant to section 569, as open space land pursuant to section 570 or land acquired or accepted in accordance with section 571 shall be based upon its current use as determined by a Valuation Committee consisting of the Commissioner of Agriculture, the Forest Commissioner, the State Tax Assessor ex officio, a municipal assessor, a farmer and a landowner appointed by the Governor.

The recommended current use value of all classes of land as pursuant to sections 568, 569, 570 and 571 determined by the committee shall be transmitted to all assessors of municipalities on or before April 1st or to the State Tax Assessor if the land is not within a municipality.

Local assessors must consider the recommended values published by the committee, but nothing in the law requires an assessor to use the values recommended.

While the assessor is not required to use the figures recommended by the committee, if he does not, he must be prepared to explain his system of arriving at "farm value" during any appeal procedure. The aggrieved property owner must be in a position to prove the assessor in error.

#### § 573. Recapture penalty

Any change in use disqualifying land for classification under sections 568, 569, 570 or 571, except when the change is occasioned by a transfer resulting from the exercise of the power of eminent domain, shall cause a penalty to be assessed by the assessor of the municipality in which the land is located, or by the State Tax Assessor if the land is not within a municipality, in addition to the annual tax in the year of disqualification.

Such penalty shall be equal to the total amount of taxes which would have been assessed in each of the years the land was classified preceding such change of use, had such real estate been assessed at its highest and best use, less all the taxes paid on said real estate over the preceding years it was classified, plus interest at an annual rate of 8% computed to accrue on the sums by which assessments were reduced by current use valuation. In the case of forest lands and open space the maximum recapture penalty shall be for a period not to exceed 15 years and in the case of farmland for a maximum period not to exceed 10 years.

#### § 574. Enforcement provision

There shall be a tax lien to secure the payment of the penalty provided in section 573. Such a lien may be enforced in the same manner as liens on real estate created by Title 36, section 552.

#### §575. Validity

If any provision of sections 566 to 574 is invalid or if the application of any such provision to any person or circumstance is invalid, such invalidity shall not affect the other provisions or applications of sections 566 to 574 and such sections shall not be invalid in their entirety.

#### § 576. Application

No person can apply for classification for more than an aggregate total of 15,000 acres.